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-(PJS/LIB) **DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO VACATE JUDGMENT AND FOR LEAVE TO AMEND COMPLAINT**

INTRODUCTION

This matter comes before the Court on Running Aces' Rules 59(e) and 15(a) motion. (Dkt. 87.) Without even attempting to meet the standard under Rule 59(e) for altering or amending a judgment, Running Aces, the operator of a parimutuel racetrack and card room and "a bitter competitor of the Tribes," (Dkt. 85 at 12), asks the Court to ignore settled law—and common sense—so that it may attempt to cure its incurably defective action challenging the legality of tribal gaming in Minnesota. The Court should deny the motion.

PROCEDURAL BACKGROUND

This case now stretches back over a year. On April 16, 2024, Running Aces commenced this action against a "mish-mash" of individuals—current and former managers and tribal leaders—affiliated with the gaming enterprises of the Prairie Island Indian Community ("PIIC") and Mille Lacs Band of Ojibwe ("Mille Lacs"), alleging that the individuals conducted gaming in violation of Minnesota criminal law and the Racketeer Influenced and Corrupt Organizations ("RICO") Act. Running Aces claimed that PIIC's and Mille Lacs' operation of certain card games was not authorized gaming under their respective federally approved tribal-state gaming compacts. (*See* Complaint ¶¶ 96, 137, Dkt. 1.) Running Aces ultimately sought to put an end to the card games by requesting declaratory and injunctive relief against the Defendants in "both their individual and official capacities" and "treble damages against all Defendants, jointly and severally"

under RICO. (*Id.* at 41.) Although Running Aces' core allegation was that the Tribes'[1] gaming was unlawful, Running Aces did not name the Tribes as defendants.

On May 14, 2024, Running Aces amended the Complaint to add additional individual defendants, namely tribal officials from the Shakopee Mdewakanton Sioux Community ("SMSC"), and to add allegations that the gaming conducted under the Tribes' Video Games of Chance Compacts was unlawful. (Amended Complaint ¶¶ 13-29, 62-63, 229-244, Dkt. 12.) Running Aces continued to seek declaratory and injunctive relief against all Defendants in their official and individual capacities and treble damages against the Defendants in their individual capacity. Running Aces again did not name the Tribes in the Amended Complaint.

On August 24, 2024, the Defendants filed Rule 12 motions alleging numerous grounds for dismissing the Amended Complaint, including Running Aces' failure to name required parties—the Tribes—as defendants, the tribal officials' immunity from suit, and Running Aces' failure to state any claim. Running Aces did not seek to amend its Amended Complaint to address the deficiencies identified in the Defendants' motions and instead filed a 99-page opposition. Even after receiving Defendants' reply memorandum (Dkt. 68) and hearing the Court's comments during a six-hour motion hearing (Dkt. 79), Running Aces chose to stand on its Amended Complaint and waited for the Court's order.

On March 11, 2025, the Court granted the Defendants' Rule 12(b)(7) motions and dismissed the Amended Complaint, finding that the Tribes—as the sovereigns who "have

[1] The Prairie Island Indian Community, Mille Lacs Band of Ojibwe, and Shakopee Mdewakanton Sioux Community are collectively referred to as "Tribes."

the exclusive right to conduct gaming on their lands," are "parties to the relevant compacts under which gaming is conducted," and "are the intended beneficiaries of Congress's decision to permit gaming on tribal lands"—are required parties under Rule 19 and could not be joined based on their sovereign immunity. (Dkt. 85 at 10.) The Court further held that the Defendants did not sufficiently represent the Tribes in the case because (1) Running Aces' action was not a proper *Ex parte Young* action; and (2) Defendants have different interests, and likely litigation strategies, than the Tribes based on the prospect of personal liability.[2] (*Id.* at 12.) On March 13, 2025, the Court entered judgment, dismissing the Amended Complaint under Fed. R. Civ. P. 12(b)(7), without prejudice, for failure to join a required party.

Two days before its deadline to appeal expired, Running Aces filed the instant motion under Rules 59(e) and 15(a), Fed. R. Civ. P., to amend its complaint a second time. Running Aces asserts that if the proposed amendment is permitted, it will "only" make claims against "SMSC defendants" for "prospective injunctive and declaratory relief. . . in their official capacity" and "only" claim "monetary damages against the PIIC and [Mille Lacs] defendants in their individual capacity." (Dkt. 89 at 5.) Running Aces asserts that its proposed Second Amended Complaint ("PSAC," Dkt. 87-1) would "address the Court's threshold concern" about "conflicts of interest from requests for dual-capacity relief against

[2] Running Aces sought to impose "crushing personal financial liability" (Dkt. 85 at 12) against individuals whose only apparent fault was showing up for work at highly regulated gaming facilities that had been in operation for over three decades, and who "likely never expected to be put in the position of defending the legality of particular games offered by the tribe." (*Id.* at 13.)

the same defendant." (*Id.*) Running Aces' PSAC also seeks to add facts and legal theories that it had ample opportunity to allege in its Complaint or Amended Complaint pertaining to Defendants' control over gaming activities, restating allegations that Running Aces competes with the Tribes, adding facts surrounding the Tribes' card games, and adding state-law claims for public nuisance and violation of trade regulation statutes. (*Id.* at 6.) Notably, the PSAC does not propose to assert claims against the Tribes.

STANDARD OF REVIEW

It is "well-settled that 'district courts in this circuit have considerable discretion to deny a timely post judgment motion for leave to amend because such motions are disfavored, but may not ignore the Rule 15(a)(2) considerations that favor affording parties an opportunity to test their claims on the merits.'" *U.S. v. Mask of Ka-Nefer-Nefer*, 752 F.3d 737, 742-43 (8th Cir. 2014) (quoting *U.S. ex rel. Roop v. Hypoguard USA, Inc.*, 559 F.3d 818, 824 (8th Cir. 2009)). However, "the liberal amendment standard in Rule 15(a)(2) does not govern [Rule 59(e) or 60 motions]." *UMB Bank, N.A. v. Guerin*, 89 F.4th 1047, 1057 (8th Cir. 2024). "When a party moves to amend a complaint after dismissal, a more restrictive standard reflecting interests of finality applies." *Id.* "Leave to amend a pleading will be granted only if it is consistent with the stringent standards governing the grant of Rule 59(e) and Rule 60(b) relief." *Id.* (quoting *Mask of Ka-Nefer-Nefer*, 752 F.3d at 743); *see also In re SuperValu, Inc.*, 925 F.3d 955, 961-62 (8th Cir. 2019) ("[T]he original

judgment must be set aside under Rule 59 or 60 before amendment can be permitted under Rule 15(a)(2).")).

ARGUMENT

Running Aces cites Rule 59(e) as authority to vacate the Court's judgment (Dkt. 89 at 2-3) yet makes no attempt to satisfy its requirements. Because Running Aces fails to meet the Rule 59(e) standard, the Court should deny its motion without further analysis. Additionally, Running Aces has unduly delayed its efforts to correct its defective Amended Complaint—an independent basis for the Court to deny the motion under Rule 59(e) without analysis of the proposed amendments.

But assuming Running Aces could satisfy the Rule 59(e) standard, Running Aces' PSAC does not (and cannot) cure the basis for the Court's March 11, 2025 Order of Dismissal: that Running Aces failed to join the Tribes, who are indispensable parties that cannot be joined and whom the current Defendants do not adequately represent. Further, the PSAC does not (and cannot) cure other fatal defects in Running Aces' pleading, which render the proposed amendment futile. Running Aces motion may therefore also be denied under Rule 15(a).

I. RUNNING ACES FAILS TO MEET THE STRICT STANDARD UNDER RULE 59(e) TO REOPEN A JUDGMENT

A. Running Aces Fails to Identify a Manifest Error of Law or Fact and Does Not Offer Newly Discovered Evidence

"Rule 59(e) motions 'serve the limited function of correcting manifest errors of law or fact or to present newly discovered evidence.'" *Phoenix Entm't Partners, LLC v. Star Music, Inc.*, 2017 WL 5714021, at *6 (D. Minn. Nov. 28, 2017) (quoting *U.S. v. Metro. St.*

Louis Sewer Dist., 440 F.3d 930, 933 (8th Cir. 2006)). Running Aces does not point to a single manifest error of law or fact in the Court's opinion and order dismissing the Amended Complaint. Nor does Running Aces offer any newly discovered evidence. It does not attempt to meet the Rule 59(e) standard, and its failure to do so is sufficient grounds for the Court to deny its motion.

B. Running Aces' Motion Should Be Denied Because It Seeks to Tender New Legal Theories that Could Have Been Offered or Raised Prior to Judgment

Running Aces' Rule 59(e) motion "cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to the entry of judgment." *Metro. St. Louis Sewer Dist.*, 440 F.3d at 933. Put another way, under Rule 59(e), "courts will not address new arguments or evidence that the moving party could have raised before the decision issued." *Banister v. Davis*, 590 U.S. 504, 508 (2020).

But Running Aces seeks to do exactly that. First, Running Aces seeks to add two new legal theories—public nuisance (*see* PSAC Counts 4, 7, 11, Dkt. 87-1) and claims under state trade regulation statutes (*see id.* Count 5). Second, in an effort to evade Rule 19, Running Aces changes its theory of the case by pleading only official capacity claims against one set of Defendants and only individual capacity claims against the other two sets of Defendants. Tendering new legal theories is expressly prohibited under Rule 59(e) and is alone sufficient reason for the Court to deny Running Aces' motion.

Running Aces quotes dictum from *Mask of Ka-Nefer-Nefer* for the proposition that the Court should grant leave under Rule 59(e) "to add a legal theory or an additional

defendant, or to cure a jurisdictional defect." (Dkt. 89 at 3.) But this Court noted that the *Mask of Ka-Nefer-Nefer* dictum has limited relevance to a post-judgment motion for leave to amend a complaint because "[t]he three Eighth Circuit cases cited in *Mask of Ka-Nefer-Nefer* for this proposition are all easily distinguishable . . . . Two of the three concern pre-judgment denials of leave to amend the complaint." *Phoenix*, 2017 WL 5714021, at *5. The third concerned post judgment denial of leave to amend, however, the court had dismissed that suit *sua sponte*. Further, each of the three appeals was decided exclusively under Rule 15(a).[3]

Running Aces appears to argue that the standard should be whether the PSAC will provide an opportunity to test its claims on the merits. (Dkt. 89 at 1, 2, 3, 5.) While that may be an important consideration in some other circumstances, the Eighth Circuit has "repeatedly explained that a motion for leave to amend after dismissal is subject to different considerations than a motion prior to dismissal." *In re SuperValu*, 925 F.3d at 961 (quotation omitted); *Phoenix*, 2017 WL 5714021, at *5 ("[T]he standard for evaluating whether to grant leave to amend is stricter after a case has been dismissed."). This Court has determined that a "motion for leave to amend after judgment has been entered will not be granted unless the motion 'is consistent with the stringent standards governing the grant

[3] *See Roberson v. Hayti Police Dep't*, 241 F.3d 992, 994 (8th Cir. 2001) (court erred by prohibiting plaintiff from amending complaint prior to trial); *Sanders v. Clemco Indus.*, 823 F.2d 214, 216-17 (8th Cir. 1987) (court erred when it dismissed complaint *sua sponte* for lack of diversity jurisdiction and denied leave to amend to correct technical defects); *Buder v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 644 F.2d 690, 691-92, 694 (8th Cir. 1981) (court erred by denying plaintiff the opportunity to file an amended complaint four days after a hearing on a summary judgment motion).

of Rule 59(e) and 60(b) relief.'" *U.S. v. Fiorito*, 2016 WL 4923503, *1 (D. Minn. Sept. 15, 2016) (quoting *Mask of Ka-Nefer-Nefer*, 752 F.3d at 743). While "it is preferable that claims brought in federal court be tested on their merits . . . [plaintiff] chose to rest on [its] original complaint and did not seek leave to amend until that complaint was found to be deficient." *Ash v. Anderson Merch., LLC*, 799 F.3d 957, 963-64 (8th Cir. 2015). That same strategic choice is fatal here to Running Aces' motion for leave to amend its complaint for a second time now.

In sum, the Court should deny the motion because Running Aces seeks to add new legal theories post-judgment.

C. Running Aces Offers No Valid Reason for Failing to Present Its New Legal Theories at an Earlier Time

The Eighth Circuit has affirmed the denial of a motion for leave to amend a complaint post judgment solely because plaintiffs "failed to provide any valid reason for failing to amend their complaint prior to the grant of summary judgment against them." *Hypoguard*, 559 F.3d at 823-24; *see also Humphreys*, 990 F.2d at 1082 ("[A] district court does not abuse its discretion in refusing to allow amendment of pleadings to change the theory of a case if the amendment is offered after summary judgment has been granted against the party, and no valid reason is shown for the failure to present the new theory at an earlier time.").[4] "Unexcused delay is sufficient to justify the court's denial . . . if the

[4] While *Hypoguard* and *Humphreys* involved dismissals on summary judgment, the analysis should be the same following a dismissal under Rule 12, where facts alleged in a complaint are presumed true.

party is seeking to amend the pleadings after the district court has dismissed the claims it seeks to amend, particularly when the plaintiff was put on notice of the need to change the pleadings before the complaint was dismissed, but failed to do so." *Horras v. Am. Capital Strategies, Ltd.*, 729 F.3d 798, 804 (8th Cir. 2013) (quotations omitted).

This Court should deny Running Aces' motion on the same grounds. Running Aces has provided no explanation for its delay. Running Aces merely concludes, without any explanation, that it "has not unduly or prejudicially delayed in seeking this amendment." (Dkt. 89 at 5.) At the same time, Running Aces admits that it "has not repeatedly tried unsuccessfully to cure the identified problem with its claims." (*Id.*) This thin attempt at explaining the delay does not warrant leave to amend.

Like the government in *Mask of Ka-Nefer-Nefer*, Running Aces chose to stand on its Amended Complaint for ten months—through extensive briefing and a day-long motion hearing that did not include Running Aces' new legal theories—before filing this motion. *See* 752 F.3d at 742 ("Here, the government failed to request leave to amend in the eleven months between the Museum's motion to dismiss and the court's Order of Dismissal, choosing instead to stand on and defend its original complaint. The district court had no reason to question that litigation strategy."). The primary focus of Running Aces' PSAC is a defect that was apparent no later than August 2024—that the tribal officials' interests differ or conflict with the interests of the Tribes:

> Here, Plaintiff is incentivizing Defendants to blame the Tribes for operation of Class III gaming, or even to compromise or settle against the Tribes' interest to avoid personal liability. *See Two Shields* [*v. Wilkinson*, 790 F.3d 791, 799 (8th Cir. 2015)] (defendants "have strong incentives to characterize any breach as resulting solely from the government's independent action and

> judgment"). This improper suit is little more than a vehicle to abuse individuals to leverage the Tribes.

(Dkt. 68 at 6.) This topic was also discussed at length during the February 13, 2025 motion hearing. (Tr. 217:18-218:1, 219:10-12, 219:20-220:13, Dkt. 79.) Still, Running Aces sought no leave to amend before dismissal.

This Court has dealt with similar circumstances before and denied a similar motion in *Phoenix*, 2017 WL 5714021. It should do the same here. As the Court determined in *Phoenix*, "unexcused delay alone is a sufficient basis on which to deny a post-judgment motion for leave to amend." *Id.* at *2. Running Aces' motion should be denied for very similar reasons to those that supported denial of Phoenix's motion:

> Phoenix could have pleaded its additional facts in its original complaint; Phoenix could have sought leave to amend its complaint to plead those facts after conferring with defendants or in responding to defendants' motions to dismiss; and Phoenix could have sought leave to amend its complaint at oral argument or at any time during the four months between the conclusion of oral argument and the entry of judgment in this case.

Id. at *4. Running Aces "made the strategic decision to stand on the allegations in its [first amended] complaint" and "justice does not require that [Running Aces] now be given a post-judgment opportunity to replead its . . . claims." *Id.*

Because Running Aces has offered no valid reason for its failure to seek leave to amend its Amended Complaint prior to judgment—despite having more than six months' notice of the defects in it—the motion should be denied.

This is not a matter of harmless delay. Running Aces' conduct has cost the Court and the Defendants significant resources. Running Aces filed a complaint, then an amended complaint to add more than ten new parties and new claims, engaged in lengthy motion

practice (hundreds of pages over four months) with all of the Defendants that sought to dismiss its claims, attended a day-long hearing during which the Parties focused on Running Aces' theories in its Amended Complaint, and received an order from this Court dismissing the Amended Complaint. Then—after all of that—Running Aces filed this motion on the last day allowed under Rule 59 to try to amend its complaint yet again, seeking to add more legal theories and attempt to get around the Court's reasoning in its order dismissing the case. "This is exactly the type of unreasonable delay that provides sufficient grounds for denying a post-judgment motion for leave to amend." *Phoenix*, 2017 WL 5714021, at *4; *see also Ash*, 799 F.3d at 963-64 (affirming denial of motion for post-judgment leave to amend as untimely that was filed only two days after judgment was entered); *Horras*, 729 F.3d at 804 (same for motion that was filed four days after judgment was entered).

II. EVEN IF RUNNING ACES COULD SATISFY RULE 59(e), LEAVE TO AMEND SHOULD BE DENIED BECAUSE THE PROPOSED AMENDMENTS ARE FUTILE

"Although leave to amend a complaint should be granted liberally when the motion is made pretrial, different considerations apply to motions filed after dismissal." *Hypoguard*, 559 F.3d at 823. Under Rule 15(a)(2), post judgment, "[a] district court may appropriately deny leave to amend where there are compelling reasons such as undue delay, bad faith, or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed undue prejudice to the non-moving party, or futility of the amendment, even when doing so will necessarily prevent resolution on the merits." *Ash*, 799 F.3d at 963. Defendants have addressed the delay and prejudice that the motion presents above.

See supra Section I.C. Running Aces' motion should also be denied because the proposed amendments are futile.

A. Running Aces' PSAC Would Still Be Dismissed on Rule 19 Grounds

The Court dismissed the Amended Complaint on Rule 19 grounds. (Dkt. 85.) Running Aces' PSAC does not attempt to resolve the Rule 19 problems identified by the Court. Running Aces still (1) does not seek to join the Tribes, which are the required parties that own and operate the gaming at issue;[5] (2) does not contend that the Tribes could be joined; and (3) does not address the prejudice the Tribes would suffer if Running Aces were successful in its claims. (Dkt. 85 at 10-12, 16.) The only defect that Running Aces seeks to remedy is the Court's determination that the Tribes are not adequately represented by the Defendants. (Dkt. 85 at 10-14.) Running Aces' proposed solution is just a re-shuffling of allegations that does not address the substantive issues that required dismissal of the Amended Complaint.

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[5] Running Aces continues to plead that each Tribe "is a federally recognized Indian tribe in Minnesota," (Dkt. 87-1, ¶¶ 76, 123, 192), which *own* five "dominant casinos in Minnesota." (*Id.* at ¶ 2.) Running Aces alleges that Class III gaming is also *operated* by the tribal governing bodies, respectively the Business Council, Corporate Commission, and Tribal Council. (*Id.* at ¶¶ 77, 124, 193.) Each Tribe has "tribal-state gaming compacts covering video games of chance" (*Id.* at ¶ 6), as well as Class III card games, (*Id.* at ¶ 7), and each maintains a Gaming Ordinance, (*Id.* at ¶¶ 93-95, 150-152, 212-214). Tribal gaming is regulated by each Tribe's regulatory body. (*Id.* at ¶¶ 94, 151, 213.) Yet, Running Aces does not name any of the Tribes as defendants.

Running Aces violates Rule 19(c) by not stating the name of the required party and the reasons for not joining the required party. Fed. R. Civ. P. 19(c). Because Running Aces assigns no error to the Court's determination that the Tribes are required parties, it must explain its reasons for not joining them as required by Rule 19(c)—because the Tribes are immune from suit or any other reason.

Rather than subject a single tribal official to both official and individual capacity claims, Running Aces now proposes to divide and conquer by bringing suit against the SMSC officials in their official capacity and against the PIIC and Mille Lacs officials in their individual capacity. Both approaches fail.

Running Aces' PSAC changes nothing with regard to the PIIC and Mille Lacs defense groups, who Running Aces still threatens with financial ruin. (Dkt. 85 at 12.) ("The personal interests of these employees in avoiding financial ruin obviously places them on a significantly different footing from that of an elected or appointed official, who is charged with enforcing a challenged law, and who faces no prospect of personal liability.") Pulling its official-capacity claims does not cure the defects of the Amended Complaint.

Running Ace's card game claims sought money damages without accompanying injunctive or declaratory relief, and those claims were dismissed under Rule 19. (Dkt. 84 at 14.) The Court found that Defendants' interest in avoiding personal RICO liability was "the sole practical interest at stake among the current parties as to the card-game claims, yet those claims turn entirely on interpretations of the relevant tribal compacts—compacts to which no defendant is a party." (*Id.*) The same reasoning applies to the proposed amended claims against the PIIC and Mille Lacs officials—nothing has changed in the case of the card game claims and the reasoning is the same for the video games of chance claims.

Running Aces' *Ex parte Young* claims against the SMSC officials fare no better. As the Court has already determined, this lawsuit is not a typical *Ex parte Young* case. (Dkt. 85 at 10-14.) No tribal official is attempting to enforce a law against Running Aces and Running Aces has not sought to name an official charged with enforcing any law, much

less a law constraining Running Aces. Instead, this suit seeks to place Running Aces in the shoes of the state of Minnesota to enforce the state's criminal laws to improve Running Aces' competitive position vis a vis the Tribes. As the Court recognized, such a challenge would "threaten the financial stability" of the Tribes in a way that is unlike a typical *Ex parte Young* challenge. (Dkt. 85 at 14.)

The proposed amendments relevant to the SMSC officials in Counts 1-5 pertain exclusively to the allegations of ongoing violations of state law. The exact same state laws are asserted in support of alleged violations of RICO. "[W]hen a plaintiff alleges that a state official has violated *state* law . . . the entire basis for the doctrine of *Young* and *Edelman* disappears." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984). The Supreme Court explained that "it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law." *Id.* Yet, Running Aces attempts a greater intrusion upon tribal sovereignty by asking this federal court to enjoin *tribal* officials acting *on tribal land* to conform their conduct to several state laws, none of which are applicable under the terms of a gaming compact negotiated decades ago between two sovereigns. *See* 25 U.S.C. § 2710(d)(3)(C)(i), (ii) (a Tribe and State may negotiate the application of state "criminal and civil laws" as well as the "allocation of criminal and civil jurisdiction."). Thus, *Ex parte Young* is "inapplicable in a suit against [tribal] officials on the basis of state law." *Pennhurst*, 465 U.S. at 106; *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)).[6]

Ex parte Young is inapplicable for several additional reasons. The Tribes are "the real, substantial party in interest" because Running Aces directs its attack on the Tribes' government gaming enterprises that provide crucial government funding and the "judgment sought would expend itself on the public treasury or domain or interfere with public administration." *Virginia Office for Protection and Advocacy v. Stewart*, 563 U.S. 247, 255 (2011). The Indian Gaming Regulatory Act ("IGRA") does not provide a private cause of action and "*Ex parte Young* by itself does not create such a cause of action." *Michigan Corr. Org. v. Michigan Dep't of Corr.*, 774 F.3d 895, 905 (6th Cir. 2014); *see Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 327-28 (2015) (Scalia, J.) ("The power of federal courts of equity to enjoin unlawful executive action is subject to express and implied statutory limitations . . . [*Ex parte Young* cannot] circumvent Congress's exclusion of private enforcement."). Remedies under *Ex parte Young* pursuant to state law and RICO conflict with the "detailed remedial scheme" prescribed by Congress in IGRA. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 74 (1996). And *Ex parte Young*

[6] Even if an ongoing violation of state law could serve as the basis for a new *Ex parte Young* theory, each state criminal law allegedly violated by SMSC officials, (Dkt. 87-1, ¶ 63), contains an express authorization or exception to permit Indian tribes to conduct video games of chance. 1989 LAWS OF MINN. CH. 334, ART. 6, § 14; *Id.* at ART. 1, § 48; s*ee* 1991 MINN. LAWS CH. 336, ART. 2, § 49 ("Sections 8, 9, 44, 45, 47, and 48 do not affect the validity of, and must not be construed as prohibiting the state from entering into or participating in, a tribal-state compact with the governing body of an Indian tribe governing the conduct of video games of chance under the Indian Gaming Regulatory Act, United States Code, title 25, sections 2701 to 2721.").

cannot provide a vehicle to avoid the Tribes' sovereign immunity because Running Aces' suit "implicates special sovereignty interests," recognized by Congress's complete preemption of the field of tribal gaming, which precludes suits such as Running Aces' that could cripple the Tribes' treasuries. *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 281 (1997).

Running Aces incorrectly suggests that limiting its claims against the SMSC officials to prospective injunctive relief will resolve the Court's determination that the officials do not adequately represent the Community due to differing litigation strategies, including settlement. Running Aces acknowledges that each SMSC gaming operation must obtain a facility license, (Dkt. 87-1 at ¶¶ 95, 152, 215), which IGRA specifies is for "each place, facility, or location on Indian lands." 25 U.S.C. § 2710(b)(1); *see id.* § 2710(d)(1)(A)(ii) (Class III gaming activities shall "meet the requirements" of § 2710(b)). Running Aces also acknowledges that each SMSC official must obtain their own individual gaming license. (Dkt. 87-3, Ex. 1 at 7; Dkt. 87-4, Ex. 2 at 24; Dkt. 87-5, Ex. 3 at 7; Dkt. 87-6, Ex. 4 at 14-15; Dkt. 87-8, Ex. 6 at 26-35; Dkt. 87-9, Ex. 7 at 7; Dkt. 87-10, § 5; Dkt. 87-12, Ex. 8 at 15); *see also* 25 U.S.C. § 2710(b)(2)(F) (Tribes shall license "primary management officials and key employees of the gaming enterprise."). The licensing of individual SMSC officials is separate and distinct from the SMSC's gaming facility license and has its own attendant considerations.

Even though the SMSC officials may not be liable for direct money damages under Running Aces' new alignment of Defendants, the SMSC officials still cannot adequately represent the SMSC because their "interests actually differ from or conflict with the tribes."

(Dkt. 62 at 86.) For example, an SMSC official could conclude that her individual license—the loss of which from an adverse judgment for engaging in illegal gambling activity has far-reaching consequences upon her professional career—is more important than the Tribes' continued operation of video games of chance.[7] No different than with the Amended Complaint, the SMSC officials—in their effort to avoid "financial ruin" and "the threat of personal liability" in the future—could settle for a prospective injunction in exchange for guarantees that their own professional license would remain unblemished. (Dkt. 85 at 12-13.)

The SMSC officials' interests under the PSAC remain different from and in conflict with the SMSC's interests, because the tribal officials must consider compromising the SMSC's position to protect their own self-interest. Consequently, the proposed amendments guarantee that the SMSC officials must blame the SMSC for its operation of video games of chance. *See Two Shields v. Wilkinson*, 790 F.3d 789, 799 (8th Cir. 2015) (tribal officials "have strong incentives to characterize any breach as resulting solely from the government's independent action and judgment"). This case can never be shoehorned into the traditional *Ex parte Young* mold of a suit against a state governor or attorney general to halt enforcement of a state law in conflict with federal law. The new legal theories advanced in the PSAC do not eliminate or even alter the different and conflicting interests of the SMSC officials and the SMSC.

[7] For instance, the tribal officials could find themselves barred from future licensure at other casinos if they have a judgment against them for illegal gambling in any capacity, official or individual.

In sum, Running Aces' PSAC does not address the fatal Rule 19 problems with its new *Ex parte Young* legal theory. Because the proposed amendments remain futile under Rule 19, Running Aces' motion should be denied.

B. IGRA Precludes Running Aces' Claims

Running Aces contends that its PSAC "address[es] various other arguments raised in defendants' motions to dismiss that the complaint's allegations were deficient." (Dkt. 89 at 5-6.) But it does not address the fundamental merits defect in the Amended Complaint; namely, that IGRA precludes all Running Aces' claims. In the order dismissing the Amended Complaint, the Court "note[d] that it harbors doubts about Running Ace's claims, as the state-law claims appear to be preempted, and the RICO claims appear to be precluded by the carefully balanced remedial scheme of IGRA." (Dkt. 85 at 18-19 (citations omitted).)

The PSAC only reinforces the conclusion that Running Aces' state law causes of action fall squarely "within the scope of IGRA's preemption of state law," because the claims "threaten the tribe's legitimate interests" and "question the correctness" and "the merits" of tribal regulatory decisions. *Gaming Corp. of Am. v. Dorsey & Whitney*, 88 F.3d 536, 550 (8th Cir. 1996).

The PSAC continues to directly threaten the absent Tribes' legitimate interests. As the Court found, "the gaming that is challenged in this lawsuit is of enormous economic importance to the absent Tribes, and protecting the economic sustainability of tribes is a primary goal of IGRA specifically and federal Indian policy generally." (Dkt. 85 at 20 (citing 25 U.S.C. §§ 2701–02).) Running Aces' claims could enjoin, or impose ruinous

financial liability on, the conduct of gaming by the three Tribes, results that are incompatible with IGRA's goal of promoting strong tribal governments, 25 U.S.C. § 2702(1).

The PSAC also doubles-down on challenging the Tribes' regulatory decisions regarding tribal gaming. For example, the PSAC confirms that the challenged gaming is subject to regulation by the PIIC Gaming Commission, pursuant to the Compacts and Gaming Ordinance approved by the Secretary of the Interior (PSAC ¶¶ 203, 207, 212, Dkt. 87-1) and that the Gaming Commission has "regulatory . . . authority" over gaming by the Community on its lands, including the responsibility to "ensure compliance with this Ordinance, the IGRA, the regulations promulgated pursuant to the IGRA, the Tribal-State Compacts, … [and] policies adopted by the Gaming Enterprise." (*Id.* ¶ 213 (quoting PIIC Gaming Ordinance § 9.b.1.N).) Yet the PSAC directly targets the Gaming Commission's regulation of gaming at Prairie Island's Treasure Island Resort and Casino—asserting that it was not correct to allow VGC gaming or to determine that certain card games were Class II rather than Class III.[8]

Further, while Running Aces conceded "IGRA's preemption of state-law causes of action," (Dkt. 62 at 27), the PSAC goes in the opposite direction by introducing new state-law causes of action. Running Aces provides no legal authority for applying these laws to tribal officials in Indian country. In addition to the Eighth Circuit's well-established IGRA

[8] Similarly, other portions of the PSAC confirm Running Aces' attempt to intrude on tribal authority to regulate on-reservation gaming on the Shakopee and Mille Lacs reservations. (PSAC ¶¶ 93, 150-51.)

preemption doctrine, the United States Court of Appeals for the Eleventh Circuit expressly held that IGRA's limited incorporation of state gambling laws in 18 U.S.C. § 1166 does not permit state-law public nuisance claims or any other civil cause of action. *PCI Gaming*, 801 F.3d at 1292-93, n.22. The Eleventh Circuit's analysis is exhaustive, covering the text, structure, and legislative history of IGRA. Running Aces provides no basis to distinguish its attempted public nuisance claims from those in *PCI Gaming*, nor does it show that its trade regulation claims in Count 5 could be viable.

Running Aces' PSAC does nothing to address Defendants' argument—not to mention the Court's assessment—that the detailed, carefully balanced, remedial scheme of IGRA precludes the RICO claims that are its centerpiece. (Dkt. 29 at 15-17; Dkt. 44 at 29-30.) The RICO claims continue to characterize gambling that falls under IGRA's comprehensive regulatory structure as RICO predicate acts, in an unsuccessful effort to avoid IGRA's preclusion of private enforcement actions.

C. Sovereign Immunity Bars All Claims Against Defendants

The PSAC is also futile because its claims should be dismissed on sovereign immunity grounds. First, there is no support for Running Aces seeking to enjoin tribal actors on the reservation to follow state law. In fact, case law dictates the opposite. *See supra* at 14-15.

Second, the Tribes remain the real parties in interest. Under the Supreme Court's precedent in *Virginia Office*, 563 U.S. at 255, no claims—whether they are brought under *Ex parte Young* or are claims against individuals for monetary damages—may proceed if the sovereign is the real party in interest. *Id.* ("[The *Ex parte Young* doctrine] rests on the

premise—less delicately called a 'fiction'—that when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the state for sovereign-immunity purposes. The doctrine is limited to that precise situation and does not apply when the state is the real, substantial party in interest[.]" (citations and quotations omitted)). As detailed in Defendants' motion to dismiss memoranda, and as found in this Court's order dismissing the Amended Complaint, the Tribes are the real parties in interest. (Dkt. 39 at 20-24; Dkt. 68 at 20-24; Dkt. 85 at 10 ("[I]t is the Tribes (not the defendants) who have the exclusive right to conduct gaming on their lands, the Tribes (not the defendants) who are parties to the relevant compacts under which gaming is conducted, and the Tribes (not the defendants) who are the intended beneficiaries of Congress's decision to permit gaming on tribal lands.").)

Finally, the PSAC does not fix the problem that the Court identified regarding the Defendants' lack of authority to effectuate the relief that Running Aces seeks. (Dkt. 85 at 17 ("But it is not clear which, if any, of the 'offices' that have been sued have authority to altogether preclude the Tribes from offering VGC. And even if one of those 'offices' has such authority, it is not clear to what extent the employing Tribe (which is not a party and thus not bound by any judgment) could simply abolish the enjoined office and move the authority to a non-enjoined office (perhaps even a new office created for this purpose).") In truth, only the Tribes have the power to control gambling that they offer under IGRA. 25 U.S.C. §§ 2710(b)(2)(A); 2710(d)(1)(A)(ii) (giving tribes sole proprietary interest in gaming operations under IGRA and the responsibility for conducting "any gaming

activity"); (Dkt. 39 at 18-19; Dkt. 68 at 21-22). And the Tribes cannot be joined or sued by Running Aces because of their sovereign immunity.

D. Qualified Immunity Blocks Any Monetary Claims against the Individual Defendants

The PSAC does nothing to address Defendants' qualified immunity defense related to any monetary claims, which Running Aces is still pursuing against the PIIC and Mille Lacs Defendants. Those defendants are entitled to qualified immunity, which can only be overcome if Running Aces pleads a violation of "clearly established statutory or constitutional rights of which a reasonable person would have known." *Acres Bonusing, Inc. v. Ramsey*, 2022 WL 17170856, *14 (N.D. Cal. Nov. 22, 2022); (*see also* Dkt. 34 at 35-36; Dkt. 39 at 24-25; Dkt. 68 at 37 (making qualified immunity arguments)). Running Aces has not done that and none of its additional or modified allegations in the PSAC cure that omission.

The Court stated during the February 13, 2025 hearing that qualified immunity was a "tough argument" for Running Aces and that the Defendants had "a pretty good argument unless [the Court] missed something." (Tr. 164:22-24, 183:11-12, Dkt. 79.) As the Court recognized, the Tribes have been operating video games of chance for 35 years and the "State has never objected. The feds have never objected. Running Aces has never objected since they opened. No court has addressed this. There's not even sort of like an attorney general report addressing it. It would be really hard for someone working at Grand Casino Hinckley to know it's clearly established that they can't be doing this." (*Id.* 164:4-13.)

Regarding the challenged card games, there is no allegation that the operation of the specific games operated by PIIC and Mille Lacs violated "clearly established statutory or constitutional rights." They have both operated the card games for nearly 17 years under Tribal regulation with the knowledge of, and without objection from, the state and federal government. (Dkt. 39 at 39.) A reasonable person would not view the continued operation of such games as violating a clearly established statutory right.

In sum, a litigation position regarding the legality of a bitter rival's gaming operation does not establish a clearly established statutory right of which a reasonable person would have known. As such, Running Aces' individual capacity claims are precluded by qualified immunity and remain futile.

E. Running Aces Fails to State a Viable RICO Claim

Running Aces' motion should be denied for the additional and independent reason that it lacks RICO statutory standing. (*See* Dkt. 68 at 27-33; Dkt. 39 at 37-52; Dkt. 34 at 40-44; Dkt. 29 at 31-40.) RICO standing is a threshold requirement appropriately addressed at the pleading stage, not an issue reserved for summary judgment or the measure of damages at trial. *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 459 (2006) (affirming dismissal of RICO claims in complaint because plaintiff could not meet the proximate cause direct injury requirement for RICO standing); *see Safe Streets All. v. Hickenlooper*, 859 F.3d 865, 887 (10th Cir. 2017) ("Of course, what we once called 'RICO standing' or

'statutory standing' we now properly characterize as the usual pleading-stage inquiry: whether the plaintiff has plausibly pled a cause of action under RICO.").

RICO standing requires pleading that each Defendant's predicate acts *proximately* caused *direct* and *concrete* harm to Running Aces. *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268, 271, 274 (1992). Yet the allegations in the PSAC (as in the earlier iterations of Running Aces' complaint) recite nothing more than speculative, indirect injury to a competitor in the form of "likely" lost customers, profits, and market share. (Dkt. 87-1 at ¶¶ 234-51.) This alleged harm "could have resulted from factors other than" the alleged RICO predicate acts, including consumer preference, the tribes' numerous superior facility amenities, and market conditions. *See Anza*, 547 U.S. at 459 ("[B]usinesses lose and gain customers for many reasons"); *Club One Casino, Inc. v. Perry*, 837 F. App'x 459, 461 (9th Cir. 2020), *aff'g*, 2018 WL 4719112, *5 (E.D. Cal. Sept. 28, 2018) (dismissing complaint on parallel facts with competing casinos). RICO simply does not redress such indirect harm, particularly between competitors.[9] *Anza*, 547 U.S. at 456-60 (emphasizing proximate cause is particularly important "when applied to claims brought by economic competitors, which, if left unchecked, could blur the line between RICO and the antitrust laws"); *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 14-15 (2010) (distinguishing competitive-harm

[9] Nor does the PSAC even attempt to tie the specific predicate acts of each Defendant to Running Aces' alleged harm, or even each scheme, instead lumping all five casinos together across three RICO schemes. Such "lumping" alone defeats RICO standing. *See Craig Outdoor Advert., Inc. v. Viacom Outdoor, Inc.*, 528 F.3d 1001, 1027 (8th Cir. 2008) ("The requirements of § 1962(c) must be established as to each individual defendant."); *Kerrigan v. ViSalus, Inc.*, 112 F. Supp. 3d 580, 608 (E.D. Mich. 2015) (finding RICO claims failed because "[p]laintiffs have not pleaded the requisite causal connection between their injuries and the predicate acts committed by each Defendant").

RICO cases involving a "zero sum" market). Allowing further amendment of the already once-amended complaint is therefore futile because Supreme Court precedent would mandate dismissal of the RICO claims for lack of statutory standing.[10]

F. Running Aces' Attempt to Allege New State Law Claims Is Futile

The proposed amendments adding new state law causes of action are futile because the state laws do not apply to Indian tribes or their activities in Indian country. And even if the laws did apply, Running Aces does not state viable causes of action.

State laws generally do not apply to Indian tribes or their members in Indian country. *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995); *McClanahan v. State Tax Comm'n of Arizona*, 411 U.S. 164, 170-71 (1973). Congress may authorize exceptions to that general rule, but Running Aces provides no authority to even suggest that Congress has done so for the attempted public nuisance claims (Counts 4, 7, and 11) or claims under the Minnesota Deceptive Trade Practices Act and Prevention of Consumer Fraud Act (Count 5). And as Defendants have shown and Running Aces has acknowledged (Dkt. 62 at 27), IGRA preempts state gaming laws in Indian country.

[10] Running Aces' RICO conspiracy claims also fail because "[a] conspiracy claim, under Section 1962(d), depends upon the success of a claim under Sections (a), (b) or (c), and a plaintiff must additionally allege the existence of a conspiracy to violate RICO, and provide facts that tend to show that the defendants entered into an agreement to effect that violation." *Murrin v. Fischer*, 2008 WL 540857, *17 (D. Minn. Feb. 25, 2008) (Schiltz, J.). Running Aces can neither establish its 1962(c) claims, as discussed above, nor that Defendants knew of the alleged illegality. *See Fed. Deposit Ins. Corp. v. First Interstate Bank of Des Moines, N.A.*, 885 F.2d 423, 431 (8th Cir. 1989) ("Knowledge of wrongful purpose" is "a crucial element" in "conspiracy cases").

But even assuming for the sake of argument that the new state law claims were not preempted by general principles of federal Indian law, or expressly preempted by IGRA, they would still not be viable. Minn. Stat. § 617.80-81, underpinning the purported public nuisance claim, does not provide a private right of action. A cause of action under Minn. Stat. § 617.81 is only authorized for "the attorney general, county attorney, city attorney" or other relevant public office—not private parties. Minn. Stat. §§ 617.80, subd. 9; 617.81, subd., 4. Despite the plain text of the statute, Running Aces attempts to assert a private right of action where none exists. (PSAC ¶ 55, Dkt. 87-1 (requesting declaratory and injunctive relief "authorized by" Minn. Stat. § 617.80-81).) The statutory limitation on the parties authorized to seek relief forecloses Running Aces from doing so. *See Semrad v. Edina Realty, Inc.*, 493 N.W.2d 528, 532 (Minn. 1992) (A "statute does not provide a private cause of action" when it "expressly grants enforcement powers to [a state entity] alone" because it shows "legislature was aware of the method by which it could create a private right of action, it did not do so.").

The Deceptive Trade Practices Act and the Consumer Fraud Act are civil laws that do not apply in Indian country. *Oklahoma Tax Comm'n*, 515 U.S. 450; *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 209-210 (1987); *Bryan v. Itasca Cnty.*, 426 U.S. 373, 385, 388-90 (1976). Further, the PSAC fails to state a claim under either statute. The Deceptive Trade Practices Act focuses on conduct that creates confusion as to the origin of goods or their qualities. A showing of a likelihood of consumer confusion or misunderstanding is required to allege conduct that comes within the reach of the statute, which the PSAC does not allege. Similarly, the Consumer Fraud Act applies only to

fraudulent conduct "in connection with the sale of any merchandise," Minn. Stat. § 325F.69, subd. 1, which is not what the SMSC Defendants are alleged to have done in offering allegedly illegal gambling, not products for sale.

CONCLUSION

Running Aces' motion should be denied.

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Respectfully submitted,

Faegre Drinker Biddle & Reath LLP

By: s/*Joshua T. Peterson*
Joshua T. Peterson, (#0397319)
Allison J. Mitchell, (#0402134)
Casey L. Matthiesen, (#0402192)
Josh.peterson@faegredrinker.com
Allison.mitchell@faegredrinker.com
Casey.matthiesen@faegredrinker.com
2200 Wells Fargo Center
90 South Seventh 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, Ronda Weizenegger

Brodeen & Paulson PLLP

By: s/*Greg Paulson*
Greg Paulson (#0250478)
Philip Brodeen (#0393568)
greg@brodeenpaulson.com
phil@brodeenpaulson.com
610 Searles Street

New Brighton, MN 55112
Phone: 612.226.5968

Attorneys for Defendants Keith Anderson, Lori Colling, Ashley Cornforth, Rebecca Crooks-Stratton, Don Damond, Lee Dillard, Alison Fogarty, Tim Genia, Angela Heikes, Noah Hirsch, Kyle Kossol, Cole Miller, Kyle Peterson, Sam Rock, Dennis Walker, Charles Vig

The Jacobson Law Group

By: s/*Joseph Halloran*
Joseph Halloran (#0244132)
James Nichols (#0388096)
jhalloran@thejacobsonlawgroup.com
jnichols@thejacobsonlawgroup.com
180 5th St E #940
St. Paul, MN 55101
Phone: 651.644.4710

Attorney for Defendants Shelley Buck, Constance Campbell, Michael Childs, Jr., Mike Heavner, Michael Jankoviak, Grant Johnson, Johnny Johnson, Ronald Johnson, Kevin McNair, Valentina Mgeni