

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

MONSTER TECHNOLOGY)
GROUP, LLC)
3708 Las Vegas Boulevard)
Suite 2102W)
Las Vegas, Nevada 89109)

Plaintiff,)

v.)

<mailto:rjgrellner@hotmail.com>)

GARRETT A. ELLER, JUDGE)

TRIBAL COURT)

IOWA TRIBE OF OKLAHOMA)

335588 East 750 Road)

Perkins, Oklahoma 74059)

Defendant.)

Case No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action to vindicate the general prohibition against Tribal Courts exercising jurisdiction of claims against non-Indian persons and entities, as to activity taking place nowhere near Tribal lands.

I. JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, in that whether a Tribal Court has the power to entertain claims against a non-Indian presents a federal question. *National Farmer’s Union Insurance Co. v. Crow Tribe*, 471 U.S. 945, 852 (1985).

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3. Venue lies pursuant to 28 U.S.C. § 1391(e), in that events giving rise to the claim occurred in this judicial district.

II. PARTIES

4. Plaintiff Monster Technology Group (“**Monster**”) is a non-Indian corporation organized under the laws of the State of Nevada and headquartered in Las Vegas. Monster is successor in interest to Universal Entertainment Group (“**UEG**”), a non-Indian Florida corporation whose extraordinary efforts laid the requisite technical foundation for Indian gaming to be offered online to an international market.

5. Defendant Judge Garrett A. Eller is named in an official capacity as a judicial officer of the Tribal Court of the Iowa Tribe of Oklahoma (“**Tribal Court**”), a federally recognized Tribe headquartered in Perkins, Oklahoma. Eller’s current judicial status is uncertain.

6. The Iowa Tribe of Oklahoma (“**Tribe**”) is the first American Tribe to conduct online Indian gaming: Thanks to the efforts of UEG, which developed the requisite software, technical aids, and other assets, the Tribe was able to begin offering online gaming directed to an exclusively international market from operations licensed and based in the Isle of Man. However, the Tribe breached its contractual commitment to share in revenues with Monster, the successor in interest to UEG.

7. The Tribe has also breached its contractual commitment to submit any dispute between itself and Monster to arbitration before the American Arbitration Association (“**AAA**”), a contractual breach nonetheless upheld by Judge Eller, who

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initially acted to enjoin an arbitration proceeding from going forward despite lacking subject matter jurisdiction of the controversy, or personal jurisdiction of non-Indian entities Monster and AAA.

8. Monster names Defendant Eller in an official capacity, for purposes of securing declaratory relief, as well as prospective injunctive relief against any continued exercise of jurisdiction of claims against Monster in the Iowa Tribal Courts, pursuant to the authority of *Ex Parte Young*, 209 U.S. 123 (1908) and its progeny.

Upon information and belief, Monster alleges the following:

III. FACTS

A. TRIBAL COURTS HAVE LIMITED JURISDICTION TO ENTERTAIN CLAIMS AGAINST NON-INDIANS

9. Indian Tribes are “distinct, dependent political communities, qualified to exercise many of the powers and prerogatives of self-government.” *Plains Commerce Bank v. Long Family Land & Cattle Co.* 554 U.S. 316, 327 (2008). However, tribal “sovereignty ... is of a unique and limited character, ... center[ing] on the land held by the tribe and tribal members within a reservation.” *Id.*

10. Thus, the “exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of tribes, and ... cannot survive without express congressional delegation.” *Montana v. United States*, 450 U.S. 544, 564 (1981). “[T]he inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.” *Id.* at 565. *See also*,

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Plains Commerce Bank, supra, 544 U.S. at 330 (“efforts by a tribe to regulate nonmembers, especially on non-Indian fee land, are presumptively invalid.”).

11. The “*Montana* rule” is subject to two narrow exceptions: First, a “tribe may regulate, through taxation, licensing, or other means, the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements...” (citations omitted). *Montana, supra*, 450 U.S. at 565. However, as the Supreme Court later made clear, “even then, the regulation must stem from the tribe’s inherent authority to set conditions on entry, preserve tribal self-government, or control internal relations.” *Plains Commerce Bank, supra*, 544 U.S. at 337. Second, “[a] tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe...” (citations omitted). *Montana, supra*, 450 U.S. at 565.

B. BACKGROUND OF UNDERLYING CASE

1. History of Pokertribes

12. UEG formerly partnered with the Cheyenne and Arapaho Tribes of Oklahoma (“CNA”) in an extraordinarily complex effort to develop software and related technical aids – together with the legal framework – necessary for creating a website devoted to online Indian gaming, in compliance with existing State and federal law. The CNA called the project *pokertribes.com* (“*Pokertribes*”).

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13. The CNA eventually invested significant funds in *Pokertribes*. However, the investment was dwarfed by reported development costs incurred by UEG; and was modest as against economic projections for a successful venture: A study of the worldwide online gaming market concluded that *Pokertribes* could bring \$132 million in gross annual revenue to the CNA by the year 2018, assuming its website was attracting just 2% of the market worldwide.

14. However, *Pokertribes* became a controversial subject during the CNA Tribal election season, and the sitting Governor lost her position. The sitting Governor's opponent had supported *Pokertribes* until a law firm seeking to represent the CNA lied to Tribal officials about the project's legitimacy and its implications for existing Tribal operations.

2. Iowa Tribe Picks up the Pokertribes Effort

15. In September 2015, the Tribe entered a "Software Licensing Agreement" ("Licensing Agreement") with the CNA's former partner UEG relating to assets including "software, translations, and modifications, support materials and documents ...," Licensing Agreement, § 1.2, all plainly necessary for any viable project to bring online Indian gaming to an international market.

16. A "Delivery and Acceptance Testing" section of the Licensing Agreement affirmed in part that "[t]he Licensed Software has been tested by Licensee to determine that the program performs according to Licensor's general descriptions of its capabilities." *Id.*, § 3.2.

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17. The “Termination” section of the Licensing Agreement said in part that “[the Tribe] may terminate this Agreement by intentionally destroying the Licensed Software and documentation and all copies thereof, or by returning the same to Licensor.” *Id.*, 7.1.

18. The Tribe agreed to a “License Issue Fee” of \$500,000, *id.*, § 4.1; and to “Sales-based Royalties” of “Twenty-Nine Percent (29%) of the net revenues received by the Licensee in the business operation” *Id.*, § 4.2.

19. Armed with software, legal and technical aids, numerous trade secrets and other assets under license from UEG, all demonstrating that online Indian gaming was indeed a viable enterprise, the Tribe sought arbitration before the AAA of a “dispute” between the Tribe and the State of Oklahoma (which actually supported the Tribe’s efforts) as to the legality of an Oklahoma Tribe conducting online gaming directed to an exclusively international market.

20. The Tribe prevailed in arbitration. In April 2016, the U.S. District Court for the Western District of Oklahoma (“Western District”) confirmed the arbitration award, thereby freeing the Iowa Tribe to continue its efforts to offer online gaming directed to an exclusively international market.

3. Iowa Tribe Creates an Entity Designed to Reap all the Benefits of Online Gaming to the Exclusion of UEG

21. In January 2016, while litigation to confirm the arbitration award was still underway in the Western District, the Tribe incorporated the “Ioway Internet Gaming Enterprise Limited” pursuant to Tribal law; and enacted the Iowa Tribe of Oklahoma Ioway

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Gaming Enterprise Act (“Ioway Gaming Enterprise Act” or “Act”) through a Resolution of the Tribe’s Business Committee adopted January 27, 2016.

22. Section 8 of the Act, “Ownership and Revenues”, provided in part as follows:

(a) *Ownership*. The Enterprise and all personal property assets used in the operation of the Enterprise and **the revenues generated by the Enterprise shall be and continue to be owned by the Tribe** but shall be administered for the Tribe by the Enterprise for the benefit of the Tribe (emphasis added).

4. Iowa Tribe Purchases Assets Licensed from UEG and Misleadingly Assures UEG of a Central Role, and Rights in, any Online Gaming Operation

23. In or about November 2016 the Tribe entered an “Intellectual Property and Other Assets Purchase Agreement” (“November 2016 Agreement”) with UEG relating to “Online Gaming Assets” and “Online Gaming Intellectual Property”, including “any and all copyright, trademarks, and patents either owned by or applied for on behalf of UEG.” November 2016 Agreement, ¶ 1.b. (Exhibit 1 hereto). The November 2016 Agreement called for the Tribe to make payments over time totaling \$10 million to UEG, including an immediate payment of \$1,650,000, in exchange for 51% of the “Online Gaming Assets.” *Id.*, ¶ 2. It also provided for arbitration under the rules of the American Arbitration Association (“AAA”) of “[a]ny dispute or difference arising out of or in connection with this Agreement” *Id.* § 8.e. (emphasis added).

24. The parties’ agreement to be bound by the AAA rules demonstrates that the parties further agreed that the AAA arbitrator would have the authority to decide whether a dispute arising from the November 2016 Agreement was subject to arbitration. *Nitro-*

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Lift Technologies, LLC v Howard., 568 U.S. 17, 133 S.Ct. 500, 503, 184 L.Ed. 2d 328 (2012) “[W]hen parties commit to arbitrate contractual disputes, it is a mainstay of the [Federal Arbitration] Act's substantive law that attacks on the validity of the contract, as distinct from attacks on the validity of the arbitration clause itself, are to be resolved ‘by the arbitrator in the first instance, not by a federal or state court.’....” (citations omitted)). See also *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019) (“[w]hen the parties’ contract delegates the arbitrability question to an arbitrator, a court may not override the contract...even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless....”)

25. The Tribe made payments to UEG totaling \$1,950,000 and agreed to pay the balance of the purchase price from the eventual revenues of the gaming operation. This purported commitment was plainly at odds with the Ioway Gaming Enterprise Act’s provision that “revenues generated by the Enterprise shall be and continue to be owned by the Tribe” *Id.*, § 8.

26. Subsequent events also make clear that from the moment Tribal leadership at the time executed the Agreement of November 2016, the Tribe never intended to honor the commitments made to UEG, giving rise to a claim for breach of the covenant of good faith and fair dealing inherent in any written contract in Oklahoma.

27. In December 2016, the Tribe organized the “Iowa Tribe Online Gaming Software LLC” under the laws of Oklahoma (“Oklahoma LLC”), designating the Tribe and UEG its sole members.

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28. In January 2017, the Tribe and UEG transferred to the Oklahoma LLC their respective interests in any “Online Gaming Assets” – defined by the Intellectual Property and Other Assets Purchase Agreement of November 2016 – while agreeing that the LLC would be entitled to recover the balance of the \$10 Million purchase price from any eventual revenues, together with royalties in the amount of 49% of eventual revenue.

29. However, the Tribe never intended for the Oklahoma LLC to recover the balance of the purchase price, or royalties from any eventual gaming revenue: At the end of the initial registration period, the Tribe allowed the Oklahoma LLC to become “inactive” and essentially defunct.

30. In February 2017, the Tribe also applied for a gaming license in the Isle of Man on behalf of the Ioway Internet Gaming Enterprise Limited, the wholly owned corporation organized under Tribal law in January 2016, whose revenues were to be “owned by the Tribe” Ioway Gaming Enterprise Act, § 8(a)(2).

5. As part of its Scheme, the Iowa Tribe recoups its Cash Payment and Other Consideration Given for the Tribe’s Purchase of UEG’s Assets after UEG transferred its Interest in “Online Gaming Assets” to Monster

31. In September 2017, the Tribe, UEG and the Oklahoma LLC executed an “Intellectual Property and Other Assets Purchase Agreement” (“September 2017 Agreement”) providing in part that the Tribe convey to UEG the 51% interest in “Online Gaming Assets” the Tribe had acquired from UEG in the November 2016 Agreement. September 2017 Agreement at 1.

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32. The transfer meant the sole member of the LLC would be UEG. *Ibid.* As part of the purchase price, the September 2017 Agreement required UEG to repay the Tribe \$1,650,000, the amount UEG had received from the Tribe under the November 2016 Agreement.

33. On the same day, and as additional consideration for UEG's payment of \$1,650,000 to the Tribe and agreement to recover the balance of the purchase price from eventual gaming revenues, the Tribe also agreed that UEG would be also entitled to an increase in the percentage of any net gaming revenue from 29% to 49%, a commitment that was plainly illusory.

34. The September 2017 Agreement also purported to supersede and replace the November 2016 Agreement between the Tribe and UEG and purported to void any assignment of rights under the November 2016 Agreement.

35. However, several weeks prior to entry into the September 2017 Agreement, UEG had already transferred all of its interests in any "Online Gaming Assets" to Monster.

36. But the Tribe did not trouble to ensure that Monster was not party to the September 2017 Agreement; additional evidence is that Tribal leadership at the time had no intention of honoring any contractual commitment to share in the proceeds of *Pokertribes*.

37. Moreover, Monster's claim that the Tribe breached the implied covenant of good faith and fair dealing accrued at the moment its leadership signed on to the November 2016 Agreement with no intention of honoring the Tribe's contractual commitments.

6. The Tribe Repudiates its Obligation to Share in Revenues Derived from Online Gaming Operations made possible by UEG

38. Sometime after September 2017, the Tribe obtained the requisite licensure for its wholly owned corporation, Ioway Internet Gaming Enterprise Limited, to begin conducting online gaming operations directed to an international market from the Isle of Man.

39. The Tribe then repudiated its contractual obligation to share in revenues with UEG or any successor in interest on false grounds that the software, technical aids, and other assets created by UEG were somehow inadequate to the purpose, and that the Tribe was therefore compelled to acquire the requisite software and technical aids from another developer.

40. Yet the Tribe signed on to a Licensing Agreement in September 2015, affirming in part that “[t]he Licensed Software has been tested by [the Tribe] to determine that the program performs according to Licensor’s general descriptions of its capabilities.” Licensing Agreement, § 3.2.

41. Moreover, the Tribe never invoked the “Termination” section of the Licensing Agreement, providing that “Licensee may terminate this Agreement by intentionally destroying the Licensed Software and documentation and all copies thereof, or by returning the same to Licensor.” *Id.*, 7.1.

42. The Tribe thus never intended to adhere to the terms of the November 2016 Agreement; but rather, planned (a) to secure the return of the \$1,650,000 paid thereunder;

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(b) to allege the software, technical aids and other assets acquired from UEG were somehow defective; and finally, (c) to repudiate commitments to pay the balance of the purchase price from online gaming operations, and 49% of any net revenues derived from the same operations going forward.

C. MONSTER FILES ARBITRATION PURSUANT TO THE NOVEMBER 2016 AGREEMENT

43. In December 2020, Monster brought a proceeding against the Tribe before the AAA, claiming under the Agreement of November 2016 as follows:

- **In Oklahoma, “[e]very contract ... implies an implied duty of good faith and fair dealing.” *Wathor v. Mutual Assurance Adm’rs, Inc.*, 87 P.3d 559, 561 (Okla. 2004). A party in violation of this implied duty is liable for breach of contract. *Ibid.***
- **Events both prior and subsequent to the November 2016 Agreement between the Tribe and UEG – providing in most relevant part that UEG sell the Tribe a 51% stake in the assets of the venture for \$10,000,000, including an immediate payment of \$1,650,000, in exchange for an increased percentage of the eventual revenue stream – show the Tribe never intended to abide by the terms, in fundamental breach of the implied duty of good faith and fair dealing inherent in the November 2016 Agreement.**
- **In January 2016, the Iowa Tribe organized a wholly owned corporation to secure licensure outside the United States, which would enable online gaming operations to take place through a Tribal corporation that was to have exclusive rights to any eventual revenues.**

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- **In very short order the Tribe recovered the \$1,650,000 paid over to UEG in November 2016, induced UEG to defer recovery of the \$8,050,000 balance of the purchase price, on purported promises (a) that a single member Oklahoma LLC – with UEG as sole member – would have ownership of “Online Gaming Assets” necessary for online Indian gaming to take place; and (b) that the percentage of net revenue from any eventual gaming operation to UEG would increase from 29% to 49%.**
- **Yet the Oklahoma LLC lapsed into inactive status immediately after its initial registration period ended. The Tribe gained licensure in the Isle of Man of its wholly owned Tribal corporation, without regard to UEG’s interest in any eventual gaming operation; and then repudiated any and all contractual obligations to UEG and its successor in interest Monster, all without legal justification or excuse, and all consistent with a scheme (a) to acquire the assets necessary to conduct online gaming, and then (b) to repudiate any contractual obligations by reference to false assertions that the software, technical aids and other assets were somehow defective.**
- **The Tribe breached the implied duty of good faith and fair dealing inherent in the November 2016 Agreement, as a direct and proximate result of which Petitioner has suffered (a) injury in the amount of \$10,000,000, the purchase price for software; and (b) injury for the continuing failure to pay Petitioner the agreed percentage of net revenue derived from online gaming operations made possible by UEG.**

First Amended Petition, AAA Case No. 01-20-0019-3927 (January 20, 2019) (Exhibit 2).

D. LITIGATION HISTORY

1. Suit in Iowa Tribal Court to Enjoin Arbitration

44. Rather than address the allegations or otherwise participate in an arbitration, the Tribe instead turned to its own courts for injunctive relief against the arbitration going forward, doing nothing to address the basis for such relief against a non-Indian corporation whose predecessor in interest – also a non-Indian entity – contracted to render services nowhere near Tribal lands, in connection with operations to take place outside the United States.

45. Judge Eller – who had been serving little more than a month – granted the injunction almost immediately. *See* Preliminary Injunction (District Court of the Iowa Tribe), Case No. CIV-21-02 (April 13, 2021) (Exhibit 3).

46. Monster had challenged the jurisdictional basis for the Tribe’s claims at some length. The extent of Judge Eller’s treatment of the jurisdiction issue was as follows: “The Court has subject matter jurisdiction of the above-styled action.” *Id.*, ¶ 1.

47. The basis for the claim in arbitration was plainly the November 2016 Agreement between the Tribe and Monster’s predecessor in interest, UEG. *Infra*, ¶ 42. Yet Judge Eller proceeded to find that “Monster initiated an arbitration ... [in which it] alleges breaches of **the [September] 2017 Asset Purchase Agreement.**” (emphasis added). *Id.* ¶ 4, and so enjoined arbitration on the basis of a purported agreement to which Monster was not a party, and under which it never claimed for relief before the AAA.

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48. On April 21, 2021. Monster took an interlocutory appeal as of right to the Supreme Court of the Iowa Tribe. Notice of Interlocutory Appeal, *Iowa Tribe v. Monster Technology Group LLC*, Case No. CIV–21–02 (April 21, 2021) (Exhibit 4). It did so pursuant to § 103(A) of the Tribe’s Appellate Procedure (Exhibit 5 consists of relevant excerpts from the Appellate Procedure), which provides for interlocutory appeal as of right from orders including the following:

(3) An order that denies, grants, or modifies a temporary injunction, or discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a temporary injunction.

Ibid. (Page 10 of 53).

49. Monster also sought expedited review on the basis of the existing record, which reflected comprehensive argument from the parties with respect to the existence or nonexistence of subject matter jurisdiction. Notice of Interlocutory Appeal (Exhibit 4) at 1–2.

50. Monster’s counsel paid the prescribed \$100 filing fee for the appeal and asked to have the entire record prepared for the parties and transmitted to the Supreme Court of the Iowa Tribe.

51. However, shortly after Plaintiff lodged its appeal, the Clerk of the Iowa Tribal Court informed counsel that the Tribe’s Supreme Court lacked the requisite number of judges to entertain the appeal.

52. Thus, the Clerk did not forward the record to Monster’s counsel until July 23, 2021, along with a bill for the record in the amount of \$308 and the cost of an original

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appeal to the Supreme Court in the first instance, in the amount of \$200. Counsel for Monster reasonably believed the Clerk had transmitted the entire record, including any records of the hearing below, to the Tribe's Supreme Court, even though it was then a non-functioning appellate court.

2. First Suit Against the Tribe in the United States District Court for the Western District of Oklahoma

53. In September 2021, when the Tribe had not yet acted to appoint the requisite judges to hear appeals, Monster brought an official capacity suit against the Tribal Court judge who entered the preliminary injunction, challenging the exercise of subject matter jurisdiction. *See Monster Technology Group, LLC v. Eller*, Case No. 21-cv-0879-J (W.D. Okla.).

54. Monster alleged that litigation in the Tribe's court languishing on appeal for some five months, with no indication when the Tribe might appoint additional judges, should excuse Monster from any further efforts to exhaust before the Tribe's courts.

55. The Court proceeded almost immediately to dismiss without prejudice on a *sua sponte* basis, in the absence of any response from the Defendant, and indeed, before Plaintiff had effected service:

If the Tribal Supreme Court upholds the lower court's determination that it has jurisdiction, Plaintiff may challenge that ruling before this Court. *See Nat'l Farmers Union*, 471 U.S. at 853. But unless and until that happens, because the exhaustion of tribal court remedies is required before Plaintiff's claims may be considered by a federal court, and because Plaintiff has not exhausted its tribal court remedies, this case is hereby DISMISSED without prejudice."

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Order in Case No. 21–cv–0879–J dated September 15, 2021.

56. Thus, the Court made clear that any effort to amend the complaint would be futile: Not until the Tribal Supreme Court rendered a decision on the appeal would Monster have met the requirements of the tribal exhaustion doctrine.

57. Monster was reluctant to have the right of access to a federal judicial forum dependent upon the capacity and/or willingness on the part of the Tribe to appoint the requisite number of judges to entertain an appeal.

3. Tenth Circuit Appeal of Dismissal

58. Monster therefore appealed from the dismissal. See *Monster Technology Group, LLC v. Eller*, No. 21–6146 (10th Cir., November 15, 2021). Monster argued, *inter alia*, that the Tenth Circuit should find an abuse of discretion in the dismissal of such an action against a Tribe on a *sua sponte* basis, even if without prejudice, in the absence of any response from the Tribe, or opportunity for the plaintiff to respond.

59. Perhaps prompted in part by Monster’s evident determination to have jurisdiction ultimately determined in a federal forum – a prospect made more likely by the absence of a functioning Tribal appellate court – the Tribe appointed several additional judges to its Supreme Court, whereupon Monster moved to dismiss the appeal in the Tenth Circuit on the ground of mootness.

60. The Tenth Circuit granted dismissal of the appeal, at the same time granting a request for attorney fees from the Tribe on the ground that the appeal as argued was frivolous.

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4. The Tribe Staffs its Supreme Court and Rules Against Monster

61. The Tribe added additional judges to its appellate court in October 2021, more than six months after entry of the preliminary injunction, and after Plaintiff's appeal to the Tribe's Supreme Court.

62. The Tribe thereafter moved to dismiss the appeal for alleged procedural defaults during the six-month period during which the Tribe's Supreme Court lacked the requisite number of judges to entertain submissions of any kind.

63. The newly constituted Tribal Supreme Court eventually heard oral argument in January 2022. On March 1, 2022, the Supreme Court of the Iowa Tribe rendered an Opinion dismissing the appeal. (Exhibit 6). While acknowledging the existence of discretion to entertain the matter, it nonetheless declined to do so in light of the following alleged violations of the Tribe's Appellate Procedure on Monster's part: "Defendant (or 'would be Appellant') failed to the comply with the Iowa Tribe of Oklahoma Appellate Procedure, including Sections 103(B)(3), 103(C)... and the entirety of Section 109." *Id.* at 2.

64. The Tribe's Supreme Court failed to acknowledge the actual basis for an interlocutory appeal taken as of right pursuant to § 103(A)(3) of the Tribe's Appellate Procedure. (Exhibit 5, page 10 of 53).

65. As for the asserted violations of Appellate Procedure, § 103(B)(3) provides as follows:

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If the order grants a preliminary injunction, the party seeking to appeal, if he desires to stay said order, shall give within ten (10) days after the order is rendered, an undertaking, with sufficient surety, in such sum as the Court deems proper, to secure the party procuring the injunction the damages he may sustain, including reasonable attorneys fees, if it is finally decided that the preliminary injunction was properly granted. The undertaking shall stay the effect of the preliminary injunction pending appeal.

(Exhibit 5, page 12 of 53).

66. Monster sought no stay of “said order”. Section 103(B)(3) of the Iowa Tribe’s Appellate Procedure was inapplicable.

67. Section 103(C) provides in relevant part as follows:

When a Judge, in making an order or decree in a civil action not otherwise appealable under this Section or another Tribal statute, shall be of the opinion that such order involves a controlling question of law as to which there is substantial grounds for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Supreme Court may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made within ten days after the entry of the order * * *

(Exhibit 5, page 12 pf 53).

68. Judge Eller, the Tribal Court judge who had been on the bench less than a month, made no such findings. Section § 103(C) of the Iowa Tribe’s Appellate Procedure is also inapplicable.

69. Section 109 sets forth a number of requirements, “[u]nless the entire transcript is to be included” *Id.*, § 109(B)(3). (5, page 17 of 53). Monster sought to have the entire record included, and its counsel reasonably believed he had paid for the

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same. Monster did not fail to comply with the requirements of § 109: they were plainly inapplicable.

70. The Tribe's Supreme Court, constituted after a period of some six months when no functioning court existed, dismissed the appeal on the basis of violations of the Tribe's Appellate Procedure that never took place. It thereby upheld a preliminary injunction entered in the absence of subject matter jurisdiction.

5. Second Suit Against the Tribe in the United States District Court for the Western District of Oklahoma

71. Monster thereafter brought suit in this Court again, arguing that Monster had met the requirement of the tribal exhaustion doctrine. *See Monster Technology Group, LLC v. Eller, Case No. 22–214–J*.

72. The Court disagreed, holding it necessary for Monster to continue the litigation before the courts of the Iowa Tribe in order to meet the tribal exhaustion doctrine: “Plaintiff has entered a special appearance but has not, for instance, filed a motion to dismiss the matter on jurisdictional grounds” *Id.* at 4.

6. Renewed Litigation before the Tribal Court

73. Upon renewal of the litigation in the Tribal Court, Monster moved immediately to dismiss the complaint, and thereby permit a contractually agreed arbitration to go forward on the basis of the November 2016 Agreement.

74. Judge Garrett Eller again entered the original preliminary injunction against arbitration going forward before the AAA and continued to preside in the matter.

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75. However, with the benefit of additional briefing and argument from the parties, Judge Eller dismissed the Tribe's action, holding that Monster's claims in arbitration indeed derived from the November 2016 Agreement, and that any claims deriving from any later agreement were not yet ripe for litigation. Exhibit 7.

76. The Tribe appealed. The Tribe's Supreme Court thereafter reversed, in an order little more than a page long with little accompanying analysis. It directed that the lower court enter a permanent injunction purporting to bar the AAA – a non-Indian entity not a party to the lawsuit or otherwise subject to the jurisdiction of the Tribal Court – from proceeding with an arbitration. Exhibit 8.

77. Garrett Eller became a member of the Texas Bar in April 2025 and established a firm in Dallas devoted to probate and related work. Judge Eller's name nonetheless appears on an Order giving effect to the Supreme Court's decision. The Order served not only to enter a purported permanent injunction against the AAA proceeding with a contractually-mandated arbitration; but was directed against "[Monster], their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, [who] are permanently enjoined from pursuing arbitration or other proceeding in any other jurisdiction against the Iowa Tribe of Oklahoma under the November 2016 Agreement or otherwise acting in derogation of the Tribe's rights as set forth in the Complaint." Order, September 18, 2025, at 3. Exhibit 9.

78. The Tribe's counsel moved for sanctions against Monster in the amount of Fifty Thousand Dollars on the basis of alleged procedural defaults during the course of

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proceedings, doing so before the same Tribal court that just a short time before had granted dismissal of the Tribe's complaint to prevent a contractually agreed arbitration from going forward.

79. The Tribe's counsel at the same time disclosed that to date the Tribe has paid him and his firm \$357,000, not in connection with the merits of the controversy, but in an effort to prevent an arbitration for decision on the merits from going forward.

80. Monster has satisfied the Tribal exhaustion, and now looks to the federal courts for relief against a Tribal court exercising jurisdiction as against a non-Indian entity whose non-Indian predecessor contracted in November 2016 to render services nowhere near Tribal lands, with respect to an online Indian gaming operation directed at an international market; and agreed with the Tribe to submit to arbitration any dispute arising under the November 2016 Agreement.

IV. CLAIMS

COUNT I (DECLARATORY JUDGMENT)

81. Monster incorporates the foregoing paragraphs herein by reference.

82. Monster is entitled to judgment pursuant to 28 U.S.C. § 2201 at this juncture declaring (a) that the Tribal Courts lack jurisdiction to entertain claims against a non-Indian entity whose non-Indian predecessor contracted in November 2016 to render services nowhere near Tribal lands, with respect to an online Indian gaming operation directed at an international market; and (b) that arbitrability of a claim pursuant to the parties'

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November 2016 Agreement is a determination for the American Arbitration Association, not for the Tribal Court or any other court(s).

COUNT II
(INJUNCTIVE RELIEF)

83. Monster incorporates the foregoing paragraphs herein by reference.

84. The Tribal Court has no authority to entertain a claim against a non-Indian entity, or to enjoin the American Arbitration Association from determining whether a claim under the parties' November 2016 Agreement is indeed subject to arbitration, and proceeding with an arbitration if and as an arbitrator holds it appropriate to do so.

85. Monster is entitled to preliminary and permanent injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining any judge(s) of the Iowa Tribal Court from exercising jurisdiction of claims against Monster or the American Arbitration Association, or continuing to enjoin an arbitration proceeding going forward.

86. Monster will suffer irreparable harm absent injunctive relief: Among other things, Monster will be forced to expend additional time and resources before Iowa Tribal Courts that plainly lack jurisdiction.

87. Monster is substantially likely to prevail on the merits: The Iowa Tribal Courts plainly lack jurisdiction of the controversy, and the non-Indian parties. Moreover, any determination of arbitrability is plainly for the American Arbitration Association to decide, not the courts of the Iowa Tribe of Oklahoma.

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88. The harm Monster confronts – the time and expense of continued litigation before a Tribal Court that plainly lacks jurisdiction – far outweighs any harm the Tribal Court is likely to suffer upon entry of injunctive relief.

89. Injunctive relief would not be adverse to the public interest. Indeed, the public interest is best served by restraining the Iowa Tribal Court from exercising jurisdiction of claims against non-Indian entities, with respect to a claim the parties have agreed should be decided by the American Arbitration Association.

PRAYER FOR RELIEF

WHEREFORE, Monster requests that this Court grant the following:

A. A judgment that the Iowa Tribal Courts lack jurisdiction to entertain claims against Monster deriving from its efforts to enforce the November 2016 Agreement in arbitration before the American Arbitration Association.

B. Preliminary and permanent injunctive relief against any further purported exercise of jurisdiction by the Iowa Tribal Courts.

C. An award of attorney fees and costs; and

D. Such other relief as the Court may deem just and proper.

Respectfully submitted this 17th day of March, 2026

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Respectfully submitted,
HOLDEN LITIGATION, Holden P.C.

/s/ Chad M. Neuens

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of March, 2026, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to all counsel of record in this action.

/s/Chad M. Neuens

Chad M. Neuens