UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HO-CHUNK NATION, Plaintiff, v. KALSHI INC., KALSHIEX LLC, ROBINHOOD MARKETS, INC., ROBINHOOD DERIVATIVES, LLC, AND DOES 1-20, Defendants.	)	Case No. 3:25-cv-00698-WMC

BRIEF IN SUPPORT OF ROBINHOOD DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

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INTRODUCTION

This case involves a novel attempt to shut down two federally licensed derivatives trading businesses on the basis that they allegedly violate Indian gaming laws and constitute an illegal gambling racket. Plaintiff invites this Court to upend a federal regulatory regime established under the Commodity Exchange Act ("CEA") and Unlawful Internet Gambling Enforcement Act ("UIGEA") based on meritless interpretations of the Indian Gaming Regulatory Act ("IGRA"), Racketeer Influenced Corrupt Organizations Act ("RICO"), and tribal law. Defendants offer event contracts on federally licensed exchanges, which are regulated under the exclusive jurisdiction of the Commodity Futures Trading Commission ("CFTC"). Defendants therefore operate businesses that are lawful under federal law nationwide, in all states and on Indian lands. Defendants are not engaged in gambling activities, and any such claim under state or tribal law is preempted by the CEA. This lawsuit is a particularly inapposite challenge because the Plaintiff tribe has no authority, under IGRA or tribal law, to regulate Defendants' off-reservation conduct.

Plaintiff does not state any legally cognizable claim. *First*, Plaintiff's claim under IGRA fails because (1) there is no right of action for Indian tribes to enjoin violations of IGRA's restrictions on gaming on Indian lands under 25 U.S.C. § 2710(d)(1); (2) Robinhood's activities do not violate 25 U.S.C. § 2710(d)(1) because they are neither "class III gaming activities" nor "on Indian lands"; (3) IGRA does not displace the CFTC's exclusive jurisdiction over event contracts traded on Designated Contract Markets ("DCMs"); and (4) Robinhood's activities are not unlawful gaming because they are expressly exempted by UIGEA. (*See* I.) *Second*, Plaintiff's claims under tribal gaming ordinances fail because Plaintiff lacks authority to regulate Robinhood (a nonmember of the Ho-Chunk Nation (the "Nation")) and the CEA preempts any conflicting tribal law. (*See* II.) *Third*, Plaintiff's tribal sovereignty claim fails, both because there is no cause of action for violation of tribal sovereignty and because the Nation has no tribal sovereignty interest as against Robinhood. (*See* III.) *Fourth*, Plaintiff's claim under RICO fails for myriad reasons, as Plaintiff has failed to adequately plead (1) standing, (2) predicate offenses and (3) the

existence of an enterprise. (*See* IV.) *Fifth*, Robinhood Markets, Inc. is not a proper party, as Plaintiff fails to state a claim against it. (*See* V.)

Accordingly, Robinhood Derivatives, LLC and Robinhood Markets, Inc. (together, "Robinhood") hereby move to dismiss all of Plaintiff's claims for the reasons herein and those set forth in the Motion to Dismiss filed by KalshiEx LLC and Kalshi Inc. (together, "Kalshi"), which Robinhood hereby joins.[1]

BACKGROUND

I. FACTUAL BACKGROUND

Plaintiff Ho-Chunk Nation, an Indian tribe in Wisconsin, seeks to enjoin Robinhood and Kalshi from allegedly "engaging in illegal sports gambling on the Nation's Indian lands" and recover damages. Compl. ¶ 1; *id.*, Prayer for Relief. Plaintiff operates gambling businesses, namely casinos that offer "slot machines, lottery games, banked and percentage card games, and sports gambling." *Id.* ¶ 9, 40. The Nation operates gambling businesses pursuant to a Tribal-State Compact with the State of Wisconsin, as set out under IGRA. *Id.* ¶¶ 38-41. "Kalshi and Robinhood are not federally-recognized Indian tribes conducting class III gaming activity pursuant to a Tribal-State Compact … or Secretarial Procedures." *Id.* ¶ 133. Rather, Robinhood and Kalshi offer federally licensed derivatives trading under the "exclusive jurisdiction" of the CFTC. *See id.* ¶ 4; *infra* II.B. Kalshi operates a "Designated Contract Market" where traders buy and sell event contracts, and Robinhood operates a "Futures Commission Merchant," which works with Kalshi to offer such trading to its customers. *See* Compl. ¶ 4.

Plaintiff's complaint is mostly devoid of allegations against Robinhood. As Plaintiff

[1] This Motion to Dismiss does not address Plaintiff's claim under the Lanham Act as Plaintiff pleads no facts supporting and gives no indication it is asserting such a claim against Robinhood. *See, e.g.*, Compl. ¶ 177 ("*Kalshi* has made false and misleading statements"), ¶ 180 ("*Kalshi* knew or should have known its statements and/or advertising activities were false"), ¶ 184 ("As a direct and proximate result of *Kalshi*'s false or misleading statements, the Nation has been, and is likely to continue to be, injured.") (emphasis added). To the extent Plaintiff intended to plead a Lanham Act claim against Robinhood, any such claim should be dismissed because Plaintiff has pled no facts supporting *any* of the elements of a false advertising claim against Robinhood. Robinhood reserves all rights to raise additional arguments as necessary.

explains, Robinhood is an "investment platform that permits trading on stocks, ETFs and other commodities." *Id.* ¶ 12. Robinhood has an "arrangement" with Kalshi through which Robinhood offers its customers event contracts trading. *Id.* ¶ 118. Specifically, Robinhood has a commission agreement (what Plaintiff calls "revenue-sharing") with Kalshi. *Id.* Based on this arrangement, Plaintiff alleges that Robinhood and Kalshi are engaged in a conspiracy under RICO, in addition to alleged violations of Indian gaming laws. *See id.* ¶¶ 148-169. Although Plaintiff's RICO claim includes fraud allegations, Plaintiff does not identify a single allegedly false statement by Robinhood.

II. LEGAL BACKGROUND

A. Federal Statutes

Plaintiff's case turns on the interaction of three federal statutes—IGRA, the CEA and UIGEA.

The Indian Gaming Regulatory Act (IGRA). In 1988, prior to the widespread availability of the Internet, Congress passed IGRA to regulate gaming on Indian lands following the Supreme Court's ruling in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), which held that states could not regulate gaming by Indian tribes on Indian lands. Congress sought to "provide a statutory basis for the operation of gaming by Indian tribes," 25 U.S.C. § 2702(1), and it did so through federal, state and tribal oversight. IGRA applies only to gaming "on Indian lands." *See id.* § 2702(3); *id.* § 2703(4) (defining "Indian lands").

Plaintiff alleges that Kalshi and Robinhood illegally conduct "Class III gaming." Compl. ¶¶ 111, 133. IGRA permits "[c]lass III gaming activities *on Indian lands*" if "located in a State that permits such gaming" and "conducted in conformance with a Tribal-State compact." 25 U.S.C. § 2710(d)(1)(B)-(C) (emphasis added). "[A]ny Indian tribe" wishing to engage in class III gaming activity "on Indian lands" must adopt a tribal ordinance and enter into a "Tribal-State compact" with the state in which the activities will occur. *Id.* § 2710(d)(1)-(3). If a tribe and state fail to enter into a compact, the Secretary of the Interior may issue "procedures" regulating such activity under certain circumstances. *Id.* § 2710(d)(7)(B)(vii). IGRA provides two rights of action

relating to Class III gaming: (1) actions by tribes to enjoin class III gaming activity on Indian lands "conducted in violation of any Tribal-State compact," 25 U.S.C. § 2710(d)(7)(A)(ii); and (2) actions by the Secretary of the Interior to enforce procedures authorizing class III gaming in the absence of a compact. 25 U.S.C. § 2710(d)(7)(A)(iii).[2, 3]

The Commodity Exchange Act (CEA). Congress passed the CEA in 1936. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 362 (1982). Although the CEA originally regulated derivatives markets alongside the states, this proved problematic and Congress opted for a more "uniform" regulatory framework. *Review of Commodity Exchange Act and Discussion of Possible Changes: Hearings Before the H. Comm. on Agric.*, 93d Cong. 121 (1973). In 1974, Congress amended the CEA to "[b]ring all futures trading under federal regulation," *Commodity Futures Trading Commission Act: Hearings Before the S. Comm. on Agric. & Forestry*, 93d Cong. 848 (1974), and "preempt the field insofar as futures regulation is concerned," H.R. Rep. No. 93-1383, at 35 (1974) (Conf. Rep.), *reprinted in* 1974 U.S.C.C.A.N. 5894, 5897. Accordingly, Congress created the CFTC and gave it "exclusive jurisdiction" over commodities trading on DCMs. *See* Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93-463, 88 Stat. 1389; 7 U.S.C. § 2(a)(1)(A). In 2000, Congress amended the CEA to add event contracts to the CEA's coverage. *See* Commodity Futures Modernization Act of 2000, Pub. L.

[2] Section 2710(d)(7)(A)(i) provides an additional cause of action under which tribes may sue states "arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact," but the Supreme Court held this cause of action (specifically, its abrogation of state sovereign immunity) unconstitutional. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 47 (1996).

[3] Other statutes provide authority for federal government enforcement of restrictions on gaming on Indian lands. For example, the Attorney General may bring criminal actions for violations of state gambling laws "in Indian country," 18 U.S.C. § 1166, and may enforce the prohibition in the Johnson Act against the use of gambling devices "within Indian country," 15 U.S.C. § 1175. *See also Lac du Flambeau Band of Lake Superior Chippewa Indians v. State of Wisconsin*, 743 F. Supp. 645, 646 (W.D. Wis. 1990) ("Unless and until the state negotiates a tribal-state compact in which plaintiffs consent to the exercise of such jurisdiction, the United States has the exclusive authority to enforce violations of state gambling laws on plaintiffs' reservations."). IGRA also creates certain other enforcement rights. The Chairman of the National Indian Gaming Commission can levy fines against and temporarily stop gaming activities by tribes or management contractors. *See* 25 U.S.C. § 2705(a)(1)-(2). Tribes may "exercise regulatory authority … under tribal law over a gaming establishment within the Indian tribe's jurisdiction." *Id.* § 2713(d).

No. 106-554, 114 Stat. 2763A-365; 7 U.S.C. § 1a(19)(iv). The CEA was further amended by the Dodd-Frank Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376, which required most swaps to be traded on registered exchanges and added a "special rule" for event contracts. *See* 7 U.S.C. § 7a-2(c)(5)(C)(i). The result of these amendments is that the CEA gives the CFTC "exclusive jurisdiction" over transactions involving event contracts that trade on a DCM.

The Unlawful Internet Gambling Enforcement Act (UIGEA). In 2006, Congress enacted UIGEA to regulate interjurisdictional gambling over the Internet. *See* 31 U.S.C. § 5361(a)(4). In doing so, Congress disavowed any intent to "alter[], limit[], or extend[]" existing federal, state and tribal regulations, including IGRA. *See id.* § 5361(b). Unlike IGRA, which covers activity on Indian lands, UIGEA controls whether online gaming that *crosses* state or tribal borders is unlawful when the activity is lawful in one location (where the bet is made or received) but not the other. *See generally id.* § 5363. Critically, UIGEA carves out CFTC-regulated transactions, including those at issue here, from its scope. *See id.* § 5362(1)(E)(ii) (defining "bet or wager" to exclude "any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the [CEA]"). As a result of this carve-out, transactions on Kalshi's DCM cannot be unlawful gaming because of UIGEA, regardless of the lawfulness of gambling in the states or tribal lands in which the event contracts are initiated or received.

B. Federal Regulation of Event Contract Trading

Event contracts are a type of derivative that allows customers to trade on their predictions about the occurrence of future events. *See KalshiEX LLC v. Commodity Futures Trading Comm'n*, No. CV 23-3257, 2024 WL 4164694, at *1-2 (D.D.C. Sept. 12, 2024), *stay denied*, 119 F.4th 58 (D.C. Cir. 2024), *and appeal dismissed*, No. 24-5205, 2025 WL 1349979 (D.C. Cir. May 7, 2025). Event contracts are typically structured as binary options posing a yes-or-no question. *Id.* at *2. A buyer takes the "yes" side and a seller takes the "no" side, and upon the expiration of the contract—typically, when the occurrence of the future event in question becomes known—the value of the contract goes to the party who was right. *See id*. Until that time, buyers and sellers can trade the contract, and the price of the contract fluctuates based on the market's assessment of

the probability the event will occur. *Id.* Traders may use event contracts to mitigate risk or to seek a financial return. *Id*. Unlike a sportsbook, where bettors place bets against the house and the house sets odds in its favor, when traders enter into event contracts, the contracts are bilateral and the market sets the contract price. *Id*.

To become a DCM, an exchange must apply and comply with CFTC regulations. 7 U.S.C. §§ 2(e), 7(a); 17 C.F.R. § 38.3(a). The CFTC's regulatory framework is designed to ensure and protect the integrity of those markets. *See* 17 C.F.R. pt. 38. Status as a DCM "imposes upon [an exchange] a duty of self-regulation, subject to the Commission's oversight," requiring the exchange to "enact and enforce rules to ensure fair and orderly trading, including rules designed to prevent price manipulation, cornering and other market disturbances." *Am. Agric. Movement, Inc. v. Bd. of Trade of Chi.*, 977 F.2d 1147, 1150-51 (7th Cir. 1992), *abrogated on other grounds by Time Warner Cable v. Doyle*, 66 F.3d 867, 875 (7th Cir. 1995). The CFTC may suspend or revoke a DCM's designation if it fails to comply with any CEA provisions or CFTC regulations. 7 U.S.C. § 8(b). Kalshi, whose event contracts Robinhood makes available on its platform, is a CFTC-registered DCM. *KalshiEX*, 2024 WL 4164694, at *4; *see* Compl. ¶¶ 10-11, 69.

C. Federal Regulation of Futures Commission Merchants

Robinhood operates within this federal scheme as a Futures Commission Merchant ("FCM"). An FCM is an entity "engaged in soliciting or in accepting orders for the purchase or sale of a commodity for future delivery; a security futures product; a swap" or certain other transactions and "in connection with [those activities], accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom." 7 U.S.C. § 1a(28)(A) (subsection headings omitted). Like DCMs, FCMs are subject to extensive federal regulation and oversight. *See, e.g.*, *id.* § 6f; 17 C.F.R. § 3.10(a) (registration requirements); 17 C.F.R. §§ 1.10(b), (d), 17.00 (reporting requirements to the CFTC); *id.* § 1.55 (disclosure requirements to the public); *id.* §§ 1.12, 1.17 (minimum financial requirements); *id.* § 1.11(c)(1) (risk management requirements); *id.* § 155.3 (requirements to maintain trading standards); *id.* § 1.71 (employee conflicts of interest); *id.* §§ 1.14, 1.18

(recordkeeping). Failure to comply can require the FCM to "transfer all customer accounts and immediately cease doing business." *Id.* § 1.17(a)(4). DCMs, like Kalshi, may execute event contract trade orders received from FCMs, like Robinhood, who accept and solicit orders from customers.

LEGAL STANDARD

"A motion to dismiss for failure to state a claim tests the sufficiency of the complaint." *McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 879 n.4 (7th Cir. 2012). "A plaintiff's '[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all allegations in the complaint are true.'" *Hughes v. Nw. Univ.*, 63 F.4th 615, 628 (7th Cir. 2023) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations and footnote omitted)). While the Court "must accept all well-pleaded facts as true and draw reasonable inferences in the plaintiff's favor," *Hughes*, 63 F.4th at 630, the Court need not assume the truth of legal conclusions merely because they are cast in the form of factual allegations, *Twombly*, 550 U.S. at 555.

ARGUMENT

I. ROBINHOOD'S SPORTS-RELATED EVENT CONTRACTS DO NOT VIOLATE IGRA.

Plaintiff fails to state a claim under IGRA against Robinhood for offering sports-related event contracts (Count I). *First*, Plaintiff has no right of action against Robinhood to enjoin alleged violations of IGRA's restrictions on Class III gaming on Indian lands. *Second*, Robinhood's activities are not covered by IGRA because they neither are "Class III gaming activities" nor take place "on Indian lands." *Third*, trading on CFTC-designated markets is subject to the CFTC's exclusive jurisdiction and therefore not actionable under IGRA. *Fourth*, UIGEA—not IGRA—governs alleged online gambling that crosses state or tribal borders, and it expressly exempts CFTC-regulated transactions such as Kalshi's and Robinhood's.

A. Plaintiff Has No Private Right of Action To Bring These Claims Under IGRA.

Plaintiff's Count I fails because Plaintiff has no right of action against Robinhood to enjoin violations of IGRA's restrictions on gaming on Indian lands under 25 U.S.C. § 2710(d)(1). Plaintiff's IGRA claim is premised on the theory that because "Kalshi and Robinhood are not federally-recognized Indian tribes conducting class III gaming activity pursuant to a Tribal-State Compact … or Secretarial Procedures," their conduct violates Section 2710(d)(1) of IGRA. *See* Compl. ¶ 133. Regardless of whether that is true (and it is not), Plaintiff cannot sue to enforce this substantive provision of IGRA.

"Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress." *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). Fundamentally, "[t]he question of the existence of a statutory cause of action is, of course, one of statutory construction." *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979). Congress may "indicate[] its intent" to create a private right of action "either expressly or by implication." *Allison v. Liberty Sav.*, 695 F.2d 1086, 1088 (7th Cir. 1982).

Plaintiff's IGRA claim does not fall within either of the two causes of action created in Section 2710(d).[4] Subsection (iii), authorizing actions by the Secretary of the Interior to enforce procedures in the absence of a compact, obviously does not apply. *See* 25 U.S.C. § 2710(d)(7)(A)(iii). Subsection (ii), authorizing actions by tribes to enjoin class III gaming activity "on Indian lands" and "conducted in violation of any Tribal-State compact," also does not apply. *See* 25 U.S.C. § 2710(d)(7)(A)(ii). *First,* Robinhood's conduct does not take place "on Indian lands." *See infra* I.B. *Second,* Robinhood does not conduct activity pursuant to any Tribal-State Compact and therefore cannot be sued for *violating* one. Compacts are *contracts* between tribes and states. *See, e.g., Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Rsrv. v. California*, 813 F.3d 1155, 1163 (9th Cir. 2015) ("General principles of federal contract law govern the Compacts, which were entered pursuant to IGRA."); *see also Wisconsin v. Ho-Chunk*

[4] As noted above, IGRA's third cause of action, related to Class III gaming, was held unconstitutional. *See supra* note 2.

Nation, 784 F.3d 1076, 1084 (7th Cir. 2015) (explaining that the State "contracted with the Nation" when entering into the tribe's compact).

Robinhood is not a party to any such contract and therefore cannot be "in violation" of its provisions. As Plaintiff itself alleges, "Kalshi and Robinhood are not federally-recognized Indian tribes conducting class III gaming activity pursuant to a Tribal-State Compact." Compl. ¶ 133. Furthermore, Ho-Chunk Nation's compact does not purport to bind Robinhood or any third party. *See id.* ¶ 9. The compact authorizes the *tribe* to conduct certain Class III gaming on its lands and prevents the *tribe* from conducting Class III gaming outside its lands, except under certain conditions.[5]

Indeed, the U.S. District Court for the Northern District of California recently analyzed the exact same issue and held that Indian tribes do not have a private right of action under IGRA. *Blue Lake Rancheria v. Kalshi Inc.*, No. 25-cv-06162-JSC, 2025 WL 3141202 (N.D. Cal. Nov. 10, 2025). *Blue Lake Rancheria* is essentially a parallel action to this action, brought by Plaintiff's counsel on behalf of three California Indian tribes against the same Defendants as here, on the same legal theories and a very similar complaint. The court in *Blue Lake Rancheria* denied the tribes' motion for preliminary injunction, holding that IGRA only authorizes suit "to enjoin 'class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact'" and Plaintiffs could not show that "Kalshi's contracts are in *violation* of its Tribal-State compact." 2025 WL 3141202, at *4-5 (emphasis added) (quotations omitted). The court noted that the relevant compact was "silent about what companies like Defendants can do on the internet, and only outlines what '[t]he Tribe' is 'authorized and permitted to operate.'" *Id.* at *5 (quotations omitted). The same is true here.

Although courts may, under limited circumstances, find an implied cause of action, Indian tribes have no right of action under IGRA except those the statute expressly provides. *Hein v. Capitan Grande Band of Diegueno Mission Indians*, 201 F.3d 1256, 1260 (9th Cir. 2000) (holding

[5] *See* Request for Judicial Notice, Ex. 1, Ho-Chunk Tribal State Compact, § IV.A-C.

that "[t]he existence of such explicit provisions authorizing suits" means that "plaintiffs [can] not sue for every violation of IGRA by direct action under the statute"); *see also id.* ("[W]here IGRA creates a private cause of action, it does so explicitly."); *Florida v. Seminole Tribe of Fla.*, 181 F.3d 1237, 1248-49 (11th Cir. 1999) ("The existence of these various express remedies is a clear signal that we should not read into IGRA [an] implied right of action …."); *Cabazon Band of Mission Indians v. Wilson*, 124 F.3d 1050, 1059-60 (9th Cir. 1997) ("Outside the express provisions of a compact, the enforcement of IGRA's prohibitions on class III gaming remains the exclusive province of the federal government."). "Where a statute creates a comprehensive regulatory scheme and provides for particular remedies, courts should not expand the coverage of the statute." *Hein*, 201 F.3d at 1260 (citation omitted).

Further, even if there were a private right of action (and there is not), Plaintiff, which alleges it operates a casino that competes with Robinhood's services, would not fall "within the zone of interests protected by [IGRA]." *Stockbridge-Munsee Comm. v. Wisconsin*, 922 F.3d 818, 821 (7th Cir. 2019).[6]

B. Robinhood's Activities Are Neither "Class III Gaming Activities" Nor "On Indian Lands."

Plaintiff's IGRA claim also fails because Robinhood's conduct here, as alleged in the complaint, does not violate IGRA Section 2710(d). IGRA defines "class III gaming" as "all forms of gaming that are not class I gaming or class II gaming." 25 U.S.C. § 2703(8).[7] "'[C]lass III gaming activity' is what goes on in a casino—each roll of the dice and spin of the wheel." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 792 (2014); *see also Wisconsin v. Ho-Chunk Nation*, 784 F.3d 1076, 1079 (7th Cir. 2015) ("Class III gaming … includes the types of games

[6] Plaintiff affirmatively advanced this argument in *Stockbridge-Munsee*. *See* Defendant-Appellee's Supplemental Brief at 14, *Stockbridge-Munsee Comm. v. Ho-Chunk Nation*, No. 18-1449 (7th Cir. Oct. 10, 2018) (argument from Plaintiff's counsel here on behalf of Plaintiff that the "zone of interests Congress sought to protect with 25 U.S.C. § 2710(d)(7)(A)(ii) is limited to states and the particular tribes with whom the states compacted").

[7] *See also id.* § 2703(6) (defining class I gaming as "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations"); *id.* § 2703(7) (defining class II gaming to include "the game of chance commonly known as bingo" and certain "card games").

that most would associate with casinos: slot machines, craps, roulette, and banked card games like blackjack.").

Robinhood does not offer "gaming" activity, class III or otherwise; it offers federally licensed derivatives trading, subject to a comprehensive regulatory scheme under the "exclusive jurisdiction" of the CFTC. *See supra* Background.[8]

Additionally, IGRA applies only to conduct "on Indian Lands," and Robinhood's conduct, as alleged, takes place *off* Indian lands. *See, e.g.*, 25 U.S.C. § 2701(d)(1). "Everything—literally everything—in IGRA affords tools (for either state or federal officials) to regulate gaming on Indian lands, *and nowhere else*." *Bay Mills*, 572 U.S. at 795 (emphasis added). This limited territorial reach of IGRA is apparent on its face. IGRA's restrictions on Class I, Class II and Class III gaming all expressly apply only to gaming "on Indian lands." *See* 25 U.S.C. § 2710(a)(1), (b)(1), (d)(1). To the extent that IGRA grants tribes the ability to license third-party gaming operators, they may do so only for gaming "conducted on Indian lands." *Id.* § 2710(b)(4)(A), (1)(B). In passing IGRA, Congress sought to "provide clear standards or regulations for the conduct of gaming *on Indian lands.*" *Id.* § 2701(3) (emphasis added); *see also id.* § 2702(3). Indeed, IGRA references the term "on Indian lands" over 20 times. That limitation is critical to the "history and design" of IGRA itself, as "the problem Congress set out to address in IGRA (*Cabazon*'s ouster of state authority) *arose in Indian lands alone*." *Bay Mills*, 572 U.S. at 794 (emphasis added).

Conduct physically occurring off-reservation does not become activity "on Indian lands" when, as here, a commercial service is simply accessible to tribal members and non-Indians, even when on Indian lands, over the Internet. *See Hornell Brewing Co. v. Rosebud Sioux Tribal Ct.*, 133 F.3d 1087, 1093 (8th Cir. 1998) ("Advertising outside the Reservation and on the Internet … cannot be said to constitute non-Indian use of Indian land."); *Stifel, Nicolaus & Co. v. Lac du*

[8] *See also Gaming*, MERRIAM-WEBSTER DICTIONARY, available at https://www.merriam-webster.com/dictionary/gaming ("the practice or activity of playing games for stakes: gambling"); *Gaming*, CAMBRIDGE DICTIONARY, available at https://dictionary.cambridge.org/us/dictionary/english/gaming ("the risking of money in games of chance, especially at a casino").

Flambeau Band of Lake Superior Chippewa Indians, 807 F.3d 184, 207-08 (7th Cir. 2015) (rejecting tribal jurisdiction over non-Indian financial institutions whose purchase of tribal bonds *off-reservation* is not "*conduct inside* the reservation that implicates the tribe's sovereign interests" (emphasis in original)); *cf. Jackson v. Payday Fin., LLC*, 764 F.3d 765, 782 n.42 (7th Cir. 2014) ("The question of a tribal court's *subject matter jurisdiction* over a nonmember, however, is tethered to the *nonmember's* actions, specifically the *nonmember's actions on the tribal land.*" (emphasis in original)); *see also California v. Iipay Nation of Santa Ysabel*, 898 F.3d 960, 964 n.6 (9th Cir. 2018) ("Congress passed IGRA in 1988—a few years before the internet became publicly available. … [T]he statute nowhere referenced the internet, or other networking capabilities that reach beyond Indian lands.").[9] As the Eighth Circuit explained in *Hornell*, "Indian tribes … 'retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians *on their reservations*,'" but "[t]he operative phrase is 'on their reservations.'" 133 F.3d at 1091 (internal citations omitted). Robinhood's servers, offices, employees and business exist entirely off Indian lands. Indeed, for any trade placed through Robinhood's app, whether on or off tribal lands, Robinhood's conduct is exclusively off-reservation (*e.g.*, flow of funds, processing and execution). The fact that Robinhood offers event contracts accessible nationwide over the Internet does not subject it to IGRA.

C. IGRA Does Not Displace Exclusive CFTC Jurisdiction Over Event Contracts Traded on DCMs.

Plaintiff's IGRA claim fails for the additional reason that Congress has made clear the CFTC has exclusive jurisdiction over event contracts traded on DCMs. Thus, IGRA cannot apply to Robinhood's offer of event contracts traded on Kalshi's DCM. "When confronted with two Acts of Congress allegedly touching on the same topic," courts are "not at 'liberty to pick and choose among congressional enactments' and must strive 'to give effect to both.'" *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (citations omitted). "[U]nless congressional intent is 'clear and

[9] *See also Stifel*, 807 F.3d at 207 ("The actions of nonmembers outside of the reservation do not implicate the Tribe's sovereignty.").

manifest,'" courts must attempt to harmonize conflicting statutes. *United States v. Palumbo Bros.*, 145 F.3d 850, 865 (7th Cir. 1998) (citations omitted).

Even if "gaming" under IGRA could be interpreted to cover sports-related event contracts (and it should not be), to harmonize IGRA and the CEA, IGRA cannot cover transactions on CFTC-designated contract markets, which are the exclusive province of the CFTC. *See supra* I.B. Congress spoke unequivocally when it declared the CFTC "shall have exclusive jurisdiction" over swaps trading on CFTC-designated exchanges. 7 U.S.C. § 2(a)(1)(A). In contrast, IGRA grants tribes "exclusive jurisdiction" only over Class I gaming, which is not at issue here. 25 U.S.C. § 2710(a)(1). In reconciling IGRA with the CEA, the "exclusive jurisdiction" provision in the CEA is an express statutory trump for CFTC jurisdiction. Indeed, in the *Blue Lake Rancheria* case described above, the court similarly held that it did not have jurisdiction to determine whether event contracts violated the CEA, given that the CFTC has "exclusive jurisdiction" over its contract markets. *See Blue Lake Rancheria*, 2025 WL 3141202, at *7.

Moreover, congressional statements about the creation of the CFTC confirm that establishing the CFTC and endowing it with exclusive jurisdiction was to "avoid unnecessary, overlapping and duplicative regulation." *FTC v. Ken Roberts Co.*, 276 F.3d 583, 588 (D.C. Cir. 2001). The CEA's design and legislative history show that "Congress intended to subject" commodity futures and derivatives "to only one set of regulations." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 99 (1992). IGRA therefore cannot govern Robinhood's offer of event contracts traded on Kalshi's DCM.

D. The UIGEA—Not IGRA—Controls Activities Across State and Tribal Borders, and It Expressly Exempts Robinhood's Conduct.

Finally, there is a fourth, independent reason that Plaintiff's IGRA claim is not legally cognizable: UIGEA exempts Robinhood's conduct, as alleged, from regulation. In UIGEA, Congress further made clear how to reconcile all three statutes (the CEA, IGRA and UIGEA). IGRA regulates gaming *on* Indian lands. *See supra* I.B; *see Iipay Nation*, 898 F.3d at 967 (explaining that when "at least some of the 'gaming activity' associated with [the alleged gaming]

does not occur on Indian lands," it is "not subject to [the Tribe's] jurisdiction under IGRA"). By contrast, UIGEA regulates gaming that *crosses* the borders of state or Indian lands. 31 U.S.C. § 5363. UIGEA *expressly* carves out trading on CFTC-regulated exchanges by defining "bet or wager" to exclude "any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the [CEA]." *Id.* § 5362(1)(E)(ii).[10] Whereas IGRA was passed *before* the advent of online gambling, UIGEA was passed *because* of it. Recognizing the potential for conflict, Congress made clear that activity regulated by the CEA is not gambling, removing it from the federal prohibition altogether.

UIGEA's treatment of Indian tribes reinforces this conclusion that the three statutes work together without conflict. UIGEA contains a specific enforcement mechanism for online transactions that are "initiated, received, or otherwise made on Indian lands." 31 U.S.C. § 5365(b)(3). That provision allows only the federal government (not Indian tribes) to bring claims, further confirming that no such cause of action exists for Plaintiff under IGRA. *See id.* § 5365(b)(3)(A)(i). Additionally, whereas UIGEA carves out all CFTC-regulated trading from the definition of "bet or wager," UIGEA "carves out" tribal gaming in a much more tailored manner, removing only "***intra****tribal* transactions" from the definition of "unlawful Internet gambling." *Id.* § 5362(10)(C) (emphasis added). In other words, while a DCM or FCM is completely exempt from UIGEA with respect to trading on DCMs, only betting that is "initiated *and* received or otherwise made *exclusively* … within the Indian lands of a single Indian tribe" or "between the Indian lands of 2 or more Indian tribes" is excluded from UIGEA. *Id.*

In the recently decided *Blue Lake Rancheria* case described above, the court similarly recognized that UIGEA harmonizes these three statutes. There, the court held that "Plaintiffs also have not shown a likelihood of succeeding on its IGRA claim for an additional reason: a later

[10] Trades executed on Kalshi's exchange constitute transactions conducted on both a "registered entity" and "exempt board of trade." *See* CFTC, In the Matter of the Application of Kalshi Klear LLC for Registration as a Derivatives Clearing Organization (Aug. 28, 2024), available at https://www.cftc.gov/IndustryOversight/IndustryFilings/ClearingOrganizations/53075; *see also* 7 U.S.C. § 1a(6) (defining "board of trade" as "any organized exchange or other trading facility").

enacted, more specific statute—the UIGEA—governs Kalshi's contracts." *Blue Lake Rancheria*, 2025 WL 3141202, at *6. The court explained that "UIGEA should be interpreted to apply to cover interstate (or state-to-Indian-lands and vice versa) gaming transactions via the internet, whereas IGRA should be interpreted to cover Class III gaming activities that take place exclusively within Tribal lands" and observed that "UIGEA contemplates this delineation." *Id.* In reaching this conclusion, the court noted that UIGEA's definition of "'bet or wager' expressly 'does not include any transaction'" conducted on a CFTC-regulated DCM. *Id.*

II. ROBINHOOD'S SPORTS-RELATED EVENT CONTRACTS DO NOT VIOLATE PLAINTIFF'S GAMING ORDINANCE.

Plaintiff's claim that Robinhood's event contracts violate the Nation's gaming ordinance (Count II), *see* Compl. ¶¶ 142-147, fails because (i) Plaintiff has no authority to enforce tribal law against Robinhood for its conduct here, (ii) Plaintiff's ordinance is preempted by the CEA and (iii) Plaintiff fails even to identify any ordinance that Robinhood has allegedly violated.

A. Plaintiff Lacks Authority To Regulate Robinhood, as a Nonmember of the Tribe.

Tribes have extremely limited authority to regulate non-Indians. As a general rule, "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." *Montana v. United States*, 450 U.S. 544, 565 (1981); *see also Plains Com. Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 327-30 (2008). The U.S. Supreme Court has recognized only two exceptions to that rule relevant here. Under these "*Montana* exceptions," tribal jurisdiction over non-Indians can exist only (1) when regulating "the activities of nonmembers who enter consensual relationships with the tribe or its members" and (2) where necessary "to protect tribal self-government or to control internal relations." *Stifel*, 807 F.3d at 193 (citations omitted).[11] Neither of the *Montana* exceptions applies here.

[11] The Seventh Circuit has also echoed *Montana*'s rule that "efforts by a tribe to regulate nonmembers … are presumptively invalid." *Jackson*, 764 F.3d at 782 n.41 (quoting *Plains Com. Bank*, 554 U.S. at 330). The court explained that it "made clear in *Jackson* … that *Plains Commerce Bank* 'circumscribed' the already narrow *Montana* exceptions." *Stifel*, 807 F.3d at 207 (quoting *Jackson*, 764 F.3d at 782). And while Plaintiff alleges that its Indian lands are held in trust by the United States, *see* Compl. ¶¶ 6, 9, that fact does not change the applicability of the

The Nation cannot regulate Robinhood under the first *Montana* exception because Robinhood is not engaged in commercial dealings with a direct connection to Indian lands. *Montana*'s first exception for "consensual relationships" permits tribes to exercise regulatory authority over nonmembers only when it "is tethered … specifically [to] the *nonmember's actions on the tribal land*." *Jackson*, 764 F.3d at 782 n.42 (emphasis in original); *see also Lexington Ins. Co. v. Smith*, 94 F.4th 870, 883-85 (9th Cir. 2024) (holding that tribal jurisdiction is only proper when consensual relationships have a "direct connection" to the tribal lands themselves), *reh'g en banc denied*, 117 F.4th 1106 (9th Cir. 2024); *Plains Com. Bank*, 554 U.S. at 334-35 (explaining that "the tribe's sovereign interests are now confined to managing tribal land" and the *Montana* exceptions "flow directly from these limited sovereign interests"); *Stifel*, 807 F.3d at 207 ("The actions of nonmembers outside of the reservation do not implicate the Tribe's sovereignty."). Case law applying this first exception is instructive. In *Williams v. Lee*, for example, the first case cited in *Montana* illustrating this exception, the Supreme Court held that tribal courts could exercise jurisdiction over a non-Indian who "operate[d] a general store in Arizona on the Navajo Indian Reservation." 358 U.S. 217, 217 (1959). In contrast, in *Stifel*, the Seventh Circuit held that the purchase of tribal bonds off-reservation did not fall within the first exception, even where the parties held meetings to discuss the transactions on-reservation. 807 F.3d at 207-08. In *Lexington*, the Ninth Circuit recently held that "Lexington's conduct occurred not only on the reservation, but on tribal lands" because Lexington sold "an insurance program marketed specifically to tribes" providing "coverage for businesses and properties on tribal trust land." 94 F.4th at 880, 885.

Robinhood's provision of a generally accessible service over the Internet that also happens to be available on Indian lands does not involve conduct that "is tethered … specifically [to] the *nonmember's actions on the tribal land*." *Jackson*, 764 F.3d at 782 n.42 (emphasis in original); *see supra* I.B. Extending *Montana*'s exceptions to conduct like Robinhood's would "imped[e] the liberty interests of nonmembers" and risk "subjecting nonmembers to tribal regulatory authority

Montana test. *Stifel*, 807 F.3d at 207.

without commensurate consent." *Montana*, 450 U.S. at 334, 337. Indeed, if *Montana*'s first exception applies here, every entity or individual with a website would be subject to tribal jurisdiction.

Similarly, the Nation cannot regulate Robinhood's conduct under the second *Montana* exception. This exception only applies to conduct that "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Stifel*, 807 F.3d at 206-08 (citations omitted) (explaining that "a tribe's inherent power" under the second *Montana* exception "does not reach beyond what is necessary to protect tribal self-government or to control internal relations"). Further, for the exception to apply, conduct must "imperil the subsistence of the tribal community" in a manner that would be "'catastrophic' for tribal self-government." *Plains Com. Bank*, 554 U.S. at 341 (citations omitted). "Tribes face a formidable burden" in establishing that non-Indian conduct imperils their ability to self-govern and subsist. *Evans v. Shoshone-Bannock Land Use Pol'y Comm'n*, 736 F.3d 1298, 1303 (9th Cir. 2013). Plaintiff's conclusory allegations of lost revenue and tautological claims equating gaming to self-government do not meet this burden. *See, e.g.*, Compl. ¶ 39. And even if Plaintiff were correct that it has lost some revenue due to Robinhood's conduct—and it pleads no facts to support that assertion—it has done nothing in its complaint to allege that the *magnitude* of such losses would imperil the subsistence of the tribal community.

The cases in Plaintiff's Complaint purporting to support tribal jurisdiction over Robinhood do nothing of the sort. *See* Compl. ¶¶ 143, 145 (citing *United States v. Wheeler*, 435 U.S. 313 (1978); *United States v. Mazurie*, 419 U.S. 544 (1975)). *Wheeler* concerns a tribe's sovereign authority to punish tribal members for violations of tribal law and is plainly inapposite. 435 U.S. at 322. *Mazurie* concerns the federal government's prosecution of a non-Indian physically located in Indian country for violating a tribal ordinance enacted pursuant to Congress's delegation to tribes of authority to issue liquor licenses. 419 U.S. at 556-58.[12] There is no such delegation here.

[12] *See* 18 U.S.C. § 1161 (delegating authority to tribes to issue liquor ordinances); 18 U.S.C. § 1154 (imposing criminal liability for distribution of liquor on Indian lands).

IGRA, 25 U.S.C. § 2710(d), does not delegate authority to tribes to regulate gaming broadly. Rather, it is a *requirement* that tribes enact an ordinance to allow them to engage in Class III gaming pursuant to a compact. *See* 25 U.S.C. § 2710(d)(1)(A). In any event, that provision of IGRA governs "gaming activities … on Indian lands," while Robinhood's activities are neither gaming nor on Indian lands, as explained above.

B. Any Ordinance Is Preempted by the CEA's Grant of Exclusive Jurisdiction.

Even if Robinhood's conduct could be governed by a tribal gaming ordinance (and it cannot), the CEA preempts tribal law to the extent it purports to regulate sports-related event contracts traded on DCMs. 7 U.S.C. § 2(a)(1)(A); H.R. Conf. Rep. No. 93-1383, at 35 (1974) (the CEA "preempt[s] the field insofar as futures regulation is concerned"); *see infra* IV.B.1.b. Federal courts have long held that the statutory language of the CEA, its legislative history, and the comprehensive regulatory framework it sets out demonstrate that Congress deliberately preempted *state* law.[13]

By the same token, the CEA and CFTC regulations also preempt *tribal* law. As with state law, federal law can expressly or impliedly preempt tribal law. *See, e.g.*, *Smart v. State Farm Ins. Co.*, 868 F.2d 929, 932-33 (7th Cir. 1989) (citing *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1116 (9th Cir. 1985)); *Little River Band of Ottawa Indians Tribal Gov't v. NLRB*, 788 F.3d 537, 548 (6th Cir. 2015); *United States v. Dion*, 476 U.S. 734, 738-39 (1986).[14]

[13] *See also Paine, Webber, Jackson & Curtis, Inc. v. Conway*, 515 F. Supp. 202, 207 (N.D. Ala. 1981) ("[T]his court finds that the Alabama gambling statutes … directly conflict with the federal purpose of fostering the [commodity futures] markets … and that Congress has preempted the field."); *Witzel v. Chartered Sys. Corp. of N.Y., Ltd.*, 490 F. Supp. 343, 347-48 (D. Minn. 1980) (preemption by CEA and CFTC regulations of Minnesota Securities Act); *Jones v. B.C. Christopher & Co.*, 466 F. Supp. 213, 220 (D. Kan. 1979) ("It is now established … that state regulatory agencies are likewise preempted by the 'exclusive jurisdiction' of the CFTC." (internal citations omitted)); *KalshiEX LLC v. Flaherty*, No. 25-cv-2152, 2025 WL 1218313, at *3-8 (D.N.J. Apr. 28, 2025), *appeal filed*, No. 25-1922 (3d Cir. May 8, 2025); *KalshiEX LLC v. Hendrick*, No. 2:25-cv-00575-APG-BNW, 2025 WL 1073495 (D. Nev. Apr. 9, 2025); *N. Am. Derivatives Exch., Inc. v. Nevada ex rel. Nev. Gaming Control Bd.*, No. 2:25-cv-00978-APG-BNW, 2025 WL 2916151, at *5 (D. Nev. Oct. 14, 2025) (holding that event contracts are not "swaps" within the meaning of the CEA but not disturbing earlier decisions holding that the CEA preempts Nevada gambling laws).

[14] The Seventh Circuit in *Smart* echoed the court in *Coeur d'Alene*, which explained that the general rule that "federal laws generally applicable throughout the United States apply with

C. Plaintiff Fails to Identify Any Tribal Ordinance that Robinhood Has Violated.

Plaintiff's claim that Robinhood violated its tribal ordinance also fails for the basic reason that Plaintiff does not even identify any ordinance. "[A] plaintiff must provide notice to defendants of her claims," and factual allegations must "provide sufficient notice to defendants of the plaintiff's claim." *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009). Plaintiff simply alleges, without reference to the ordinance, that it "has enacted a Gaming Ordinance … comprehensively regulating gaming activities on the Nation's Indian Lands." Compl. ¶ 42; *see also id.* ¶¶ 43-45, 142-147. Plaintiff claims this ordinance establishes a gaming commission and requires licenses and background checks, and specifies the games that can be played on tribal lands. *Id.* ¶¶ 43-45. By failing even to cite the alleged ordinance, Plaintiff fails to provide sufficient notice of its claims. *See Brooks*, 578 F.3d at 581.

III. PLAINTIFF'S TRIBAL SOVEREIGNTY CLAIM IS NOT ACTIONABLE.

Plaintiff's attempt to recast its claim that Robinhood violates tribal law as a separate cause of action for infringing on tribal sovereignty (Count IV) fails as well. *See* Compl. ¶¶ 170-175. Plaintiff has no cause of action for a violation of its tribal sovereignty and no sovereign right to vindicate.

A. Plaintiff Has No Cause of Action for a Violation of Tribal Sovereignty.

Plaintiff has no right of action to sue Robinhood for a violation of inherent tribal sovereignty. Plaintiff identifies no authority, and Robinhood is aware of none, supporting such a cause of action. Rather, inherent tribal sovereignty generally arises as a defense to (i) intrusions on tribal sovereignty by a State (or subdivision) (*i.e.*, a clash between sovereigns), *see, e.g.*, *Ute Indian Tribe of the Uintah & Ouray Rsrv. v. Utah*, 790 F.3d 1000, 1003 (10th Cir. 2015); *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1237-38 (10th Cir. 2001); *Choctaw Nation*

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equal force to Indians on reservations" is subject to only three exceptions, where: "(1) the law touches exclusive rights of self-governance in purely intramural matters; (2) the application of the law to the tribe would abrogate rights guaranteed by Indian treaties; or (3) there is proof by legislative history or some other means that Congress intended [the law] not to apply to Indians on their reservations." 751 F.2d at 1115-16 (citations and quotations omitted). None of these exceptions applies.

of Okla. v. Oklahoma, 724 F. Supp. 2d 1182, 1184 (W.D. Okla. 2010), especially in the context of *Ex parte Young* suits to prevent state officers from enforcing federally preempted state law on tribal lands, *see, e.g.*, *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980); *Prairie Band*, 253 F.3d at 1234, or (ii) lawsuits that infringe on tribal sovereign immunity, *see, e.g.*, *Meyers v. Oneida Tribe of Indians of Wis.*, 836 F.3d 818, 822 (7th Cir. 2016); *Wells Fargo Bank, N.A. v. Lake of the Torches Econ. Dev. Corp.*, 658 F.3d 684, 702 (7th Cir. 2011).[15] Neither of those conditions is present here.

For the source of this supposed right, Plaintiff relies on *Williams v. Lee*, which does not support a cause of action to enforce tribal inherent sovereignty. *See* Compl. ¶ 174. As discussed above, *Williams* is a straightforward application of *Montana*'s first exception involving a store owner on the Navajo Indian Reservation. *See supra* II.A. In *Williams*, the non-Indian store owner brought an action in state court to enforce a debt owed by a member of the Navajo tribe and his wife, who *defended* against the case by arguing that "jurisdiction lay in the tribal court rather than in state court." 358 U.S. at 217-18. By no means does *Williams* stand for the proposition that tribes have a general private right of action against non-Indians for intrusion on tribal sovereignty.

B. Plaintiff Has No Sovereign Right To Vindicate in This Case.

Plaintiff cannot even allege any tribal sovereignty interest at stake in this case. *First*, there is no tribal sovereignty interest as against Robinhood. Robinhood is a non-Indian engaged in federally regulated, off-reservation conduct. *See supra* II.A. *Second*, there is no sovereign right vis-à-vis the federal government, which has appropriately determined to subject derivatives trading to the "exclusive jurisdiction" of the CFTC. *See supra* II.B. Plaintiff's tribal sovereignty claim is premised on an incorrect assumption that the Nation's inherent right to regulate gaming on its lands can displace *Congress*'s express decision to give the CFTC exclusive jurisdiction to regulate

[15] Issues of tribal sovereignty also arise in the context of attempts by tribes to enforce tribal law against non-Indians present on or doing business related directly to Indian lands. *See, e.g.*, *Lexington*, 94 F.4th at 883-85. As discussed in Section II.A, Plaintiff lacks legislative jurisdiction to enforce any ordinances against Robinhood, and in any event these cases do not support the existence of an independent cause of action for violation of tribal sovereignty.

event contracts (including sports-related event contracts) trading on a registered DCM. To the contrary, the *federal government* can, and often does, limit tribal sovereignty. "Congress has plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978); *see also Smart*, 868 F.2d at 932 ("Unlike the States, Indian Tribes possess limited sovereignty, subject to complete defeasance by Congress."). Here, Congress did just that. To the extent that Plaintiff wishes to challenge Congress's decision, *Congress* is the appropriate forum. *See Soto v. United States*, 605 U.S. 360, 375 (2025) (recognizing that "policy choice[s]" are a "'matter for Congress, not … [c]ourt[s], to resolve'").

IV. PLAINTIFF FAILS TO ADEQUATELY PLEAD ITS CIVIL RICO CLAIM.

Plaintiff also fails to adequately plead a RICO claim against Robinhood. *First*, Plaintiff lacks standing to assert a civil RICO claim. *Second*, Plaintiff's claim fails on every element: (1) it does not allege a single predicate act to constitute racketeering activity (let alone a "pattern" of such activity); and (2) it does not plausibly allege that Robinhood acted in furtherance of any RICO "enterprise."

A. Plaintiff Lacks Standing To Assert a Civil RICO Claim.

To have standing to bring a civil RICO claim, Plaintiff must be injured "by reason of" a violation of Section 1962. 18 U.S.C. § 1964(c). This requires a plaintiff to allege that "the RICO violation was the proximate cause of his or her damages." *James Cape & Sons Co. v. PCC Constr. Co.*, 453 F.3d 396, 403 (7th Cir. 2006) (citing *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006)). Plaintiff has failed to do so because Plaintiff is an alleged business competitor—not a victim of any RICO conspiracy.

Plaintiff, as a casino operator who alleges it competes with Robinhood's sports-related event contracts business, lacks standing to bring a civil RICO claim predicated on the violation of federal gambling and wire fraud statutes. Congress enacted RICO in response to a "perceived need to combat organized crime"—not to provide treble damages to any ordinary tort plaintiff. *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 248 (1989). Indeed, "civil RICO plaintiffs persist in

trying to fit a square peg in a round hole by squeezing garden-variety business disputes into civil RICO actions." *Midwest Grinding Co. v. Spitz*, 976 F.2d 1016, 1025 (7th Cir. 1992); *see also McDonald v. Schencker*, 18 F.3d 491, 499 (7th Cir. 1994). "[T]he common law principle of proximate cause provides a limit on standing to sue under RICO." *Schiffels v. Kemper Fin. Servs., Inc.*, 978 F.2d 344, 350 (7th Cir. 1992), *abrogated on other grounds by Beck v. Prupis*, 529 U.S. 494 (2000).

To that end, only those who are *direct* victims of the alleged predicate violations—not indirect business competitors—have standing to pursue civil RICO claims. *Anza*, 547 U.S. at 458-60; *see also Ratfield v. United States Drug Testing Lab'ys, Inc.*, 140 F.4th 849, 852-53 (7th Cir. 2025) (finding that plaintiffs "f[ell] short" of "draw[ing] a direct causal link"); *Diamond Sawblades Mfrs.' Coal. v. Diamond Tools Tech., LLC*, 504 F. Supp. 3d 927, 936-38 (S.D. Ind. 2020) (comparing plaintiffs' harm to the harm in *Anza* and finding a lack of proximate cause under RICO because plaintiffs were not directly harmed). As the Supreme Court recently explained, the "key word is 'direct,'" and mere "foreseeability" of harm to indirect victims is insufficient to create standing to sue. *Med. Marijuana, Inc. v. Horn*, 604 U.S. 593, 612 (2025) (citation omitted) ("First and foremost is RICO's direct-relationship requirement.").

Here, *consumers* of event contracts would be the alleged victims of the purported "Gaming Racket." Compl. ¶ 152. Plaintiff alleges that Defendants targeted consumers by offering illicit sports betting disguised as CFTC-compliant sports-related event contracts, which induced those consumers to trade those event contracts. *See id.* ¶ 154. By Plaintiff's own theory, the victims of any purported RICO scheme are consumers who lost money trading event contracts, not tribal casinos who allegedly suffer "diverted revenue" from the indirect injury of "direct competition." *Id.* ¶ 168. The law is clear that such indirect victims do not suffer injuries proximately caused by the RICO conduct.

Moreover, none of the federal statutes that serve as predicates for Plaintiff's RICO claim—the Wire Act, the Illegal Gambling Business Act and the federal wire fraud statute (*see infra* IV.B)—has as a purpose the protection of casinos from competition. To determine RICO standing,

courts analyze the class of persons a predicate statute is intended to protect to understand who the direct victims of the alleged scheme are. *Compare Anza*, 547 U.S. at 457-60 (competitor's injury—lost sales—was not proximately caused by alleged sales tax fraud because "direct victim of this conduct was the State of New York, not [competitor]"), *Jepson, Inc. v. Makita Corp.*, 34 F.3d 1321, 1326-27 (7th Cir. 1994) (noting that the mail and wire fraud statutes focus on the protection of property rights, and a competitive injury was likely "beyond the scope of the mail and wire fraud statutes"), *and Baisch v. Gallina*, 346 F.3d 366, 375 (2d Cir. 2003) (citations omitted) (holding that "a RICO plaintiff must show both that he is within the class the statute sought to protect and that the harm done was the one that the statute meant to prevent."), *with Empress Casino Joliet Corp. v. Johnston*, 763 F.3d 723, 733-34 (7th Cir. 2014) (proximate cause existed where governor was bribed to sign a bill imposing tax on certain plaintiff casinos such that there "was no more directly injured party standing between [plaintiffs] and the alleged wrongdoer … no one else to whom [plaintiffs] could look for relief."). "There is no need to broaden the universe of actionable harms to permit RICO suits by parties who have been injured only indirectly." *Anza*, 547 U.S. at 460. Any direct victims of the alleged violations of the federal statutes Plaintiff cites would be those who traded sports-related event contracts—not Plaintiff.

B. Plaintiff Fails To Plausibly Plead Any Element of Its Civil RICO Claim.

To prove a civil RICO claim under 18 U.S.C. § 1962(c), Plaintiff must show "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985). Plaintiff does not plausibly plead any of these elements.

1. Plaintiff Fails To Plead That Robinhood Engaged in A Single Predicate Act of Racketeering Conduct, Let Alone a Pattern of Such Conduct.

Plaintiff fails to allege the first and fourth elements of its RICO claim as it has not pleaded a single act of racketeering activity. "[R]acketeering activity" requires Plaintiff to plead sufficient facts to establish the commission of at least two "predicate act[s]," as defined in 18 U.S.C. § 1961(1). *See Sedima*, 473 U.S. at 495, 496 n.14. Plaintiff alleges three predicate acts: (1) interstate transmission of wagering information under 18 U.S.C. § 1084; (2) operation of an

illegal gambling business under 18 U.S.C. § 1955; and (3) wire fraud under 18 U.S.C. § 1343. None is plausibly pleaded. Therefore, Plaintiff also fails to plead a pattern of such conduct (*i.e.*, the third element of its civil RICO claim).[16]

a. Plaintiff Does Not Plausibly Plead Interstate Transmission of Wagering Information Under 18 U.S.C. § 1084.

Plaintiff does not plausibly plead that Robinhood violated the Wire Act, 18 U.S.C. § 1084. *See* Compl. ¶¶ 153, 168. The Wire Act makes it a crime to be "engaged in the business of betting or wagering" and "knowingly use a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers … on any sporting event or contest." 18 U.S.C. § 1084(a).[17]

First, Robinhood's conduct does not constitute a "bet or wager" within the meaning of 18 U.S.C. § 1084(a). The terms "betting or wagering" are undefined in that statute. *See* 18 U.S.C. § 1084(a). In contrast, UIGEA, passed in 2006, expressly defines "bet" and "wager" under federal law to exclude CEA-regulated derivatives trading. *See* 31 U.S.C. § 5362(1)(E)(ii); *supra* I.D. Interpreting the same words differently in these two federal statutes would create "different meanings in different contexts, even though those words had a single, well-settled meaning when Congress enacted" UIGEA, and wreak havoc. *See Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 818 (2024). *Second*, Robinhood's conduct does not constitute "betting or wagering" within the meaning of 18 U.S.C. § 1084 because event contracts trading is not "betting or wagering" within the ordinary meaning of those terms. *See supra* I.B. *Third*, Robinhood's conduct does not constitute "betting or wagering" under the Wire Act because event contracts trading is subject to the "exclusive jurisdiction" of the CFTC (just as any futures or options trading is not betting or wagering). *See supra* I.C. Defining "betting or wagering" to

[16] A "pattern" requires "a closed-ended series of conduct that existed for such an extended period of time that a threat of future harm is implicit" or "open-ended series of conduct that … shows clear signs of threatening to continue …." *Menzies v. Seyfarth Shaw LLP*, 943 F.3d 328, 337 (7th Cir. 2019).

[17] The Wire Act was enacted in 1961 in a series of statutes directed to organized crime, *see United States v. Martin*, 389 F.2d 895, 898 n.7 (5th Cir. 1968), with the purpose of "assist[ing] the states in enforcing their own laws against gambling," *United States v. Southard*, 700 F.2d 1, 20 (1st Cir. 1983).

include CFTC-regulated futures and derivatives trading would expose wide swaths of the American financial markets to potential criminal liability. Indeed, Congress subjected derivatives trading to the exclusive jurisdiction of the CFTC to overturn the historical state of affairs in which states and courts regularly treated commodities futures trading as gambling. *See, e.g., Irwin v. Williar*, 110 U.S. 499, 511 (1884); *Dickson v. Uhlmann Grain Co.*, 288 U.S. 188, 198 (1933). Recognizing that history, with respect to the application of state gambling laws, federal courts have long held that the CEA preempts such laws. *See supra* note 13.

b. Plaintiff Does Not Plausibly Plead the Operation of an Illegal Gambling Business Under 18 U.S.C. § 1955.

Plaintiff also does not plausibly plead that Robinhood violated the Illegal Gambling Business Act, 18 U.S.C. § 1955.[18] *See* Compl. ¶¶ 153, 168. The Illegal Gambling Business Act makes it a crime to "conduct[], finance[], manage[], supervise[], direct[], or own[] all or part of an illegal gambling business." 18 U.S.C. § 1955(a). Section 1955(b)(1) defines an "illegal gambling business" as "a gambling business" which "violat[es] … the law of a State or political subdivision in which it is conducted."

For the same reasons that Plaintiff's Wire Act claim fails, so too does Plaintiff's claim under the Illegal Gambling Business Act. Given the CEA and UIGEA, the definitions of "gambling" and "gambling business" in 18 U.S.C. § 1955 do not apply to Robinhood's federally regulated derivatives trading business. *See supra* IV.B.1.a. This is especially true here, where Robinhood's conduct is not *illegal* in any sense because it is *legal* under the CEA and UIGEA. Moreover, 18 U.S.C. § 1955 applies only to gambling illegal under *state* law, *see* 18 U.S.C. § 1955(b)(1). Robinhood's conduct does not violate state law, because state law that conflicts with the CEA is preempted. *See supra* IV.B.1.a; note 13.[19]

[18] This provision was enacted as part of the Organized Crime Control Act of 1970, and was aimed at removing a principal source of revenue for organized crime. *See Iannelli v. United States*, 420 U.S. 770, 787-88 (1975).

[19] The CFTC itself believes the CEA preempts any conflicting state law regulating trading on a DCM. *See* Appellant's Brief at 27, *KalshiEX LLC v. Commodity Futures Trading Comm'n*, 119 F.4th 58 (D.C. Cir. 2024) (No. 24-5205), 2024 WL 4512583, at *27.

c. Plaintiff Does Not Plausibly Plead Wire Fraud Under 18 U.S.C. § 1343.

Plaintiff's claim that Robinhood violated 18 U.S.C. § 1343 by engaging in wire fraud also fails. *See* Compl. ¶¶ 153, 168. Pleading wire fraud requires allegations supporting (1) "the defendant's participation in a scheme to defraud"; (2) "defendant's commission of the act with intent to defraud"; and (3) the use of interstate wires "in furtherance of the fraudulent scheme." *Bible v. United Student Aid Funds, Inc.*, 799 F.3d 633, 657 (7th Cir. 2015). Pleading wire fraud as a RICO predicate requires heightened pleading. *Sabrina Roppo v. Travelers Com. Ins. Co.*, 869 F.3d 568, 587 n.56 (7th Cir. 2017) (citing Fed. R. Civ. P. 9(b)). At a minimum, a RICO plaintiff must "describe the predicate acts [of fraud] with some specificity and state the time, place, and content of the alleged communications perpetrating the fraud." *Id*. "The complaint must also allege facts from which it reasonably may be inferred that the defendants engaged in the scheme with fraudulent intent." *Jepson*, 34 F.3d at 1328 (citations omitted).

Plaintiff's wire fraud claim fails because Plaintiff does not allege that Kalshi and Robinhood acted with intent to defraud. An intent to defraud requires a willful act by the defendant with the specific intent to deceive or cheat. *United States v. Lundberg*, 990 F.3d 1087, 1095 (7th Cir. 2021). This requires defendants to have knowledge of the fraudulent nature of the scheme and to intend that "illicit objectives be achieved." *Id*. Plaintiff's allegations come nowhere close. Plaintiff's wire fraud claim is based on Defendants allegedly "using wires in furtherance of" their purported "scheme to use the CFTC self-certification process to offer sports betting." *See* Compl. ¶¶ 152-154. Plaintiff pleads no facts or reason to infer that any statements made by Defendants were *false*, much less made with intent to cheat or deceive. On the contrary, these statements reflect Defendants' genuinely held belief, as reflected by their positions in this litigation, that their conduct is lawful under the CEA. Plaintiff's other allegations of intentional conduct fare no better. Plaintiff alleges repeatedly that Defendants acted "knowingly" or "intentionally," but these statements involve either (i) allegations that Robinhood and Kalshi knowingly operated an alleged illegal gambling business, *see, e.g.*, Compl. ¶¶ 155, 158; or (ii) Lanham Act allegations that Kalshi made "false and misleading statements of fact" concerning the "*legality*" of its derivatives trading

business, *see, e.g.*, Compl. ¶ 177 (emphasis added). The former are irrelevant. The latter fail for the reason above: there is no reason to believe these statements concerned a "deliberate falsification" nor reflect an intent that "illicit objectives be achieved," rather than a genuine belief by Kalshi that its event contracts are legal under the CEA. *See Lundberg*, 990 F.3d at 1095-96 (quotations and citations omitted); *see also Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 575 U.S. 175, 186 (2015) (holding that "sincere statement[s]" that "we believe we are obeying the law" cannot form the basis for securities fraud claims); *Blue Lake Rancheria*, 2025 WL 3141202 at *2 ("Kalshi's advertisement is merely stating an opinion its product is legal, and given multiple courts have agreed with it, Plaintiffs have not shown the opinion is literally false or that Kalshi lacks a good-faith belief in the opinion's truth.").

2. Allegations that Robinhood and Kalshi Conducted a Legitimate Business Activity Cannot Support a RICO "Enterprise."

Last, Plaintiff's RICO claim fails because it impermissibly seeks to transform Robinhood and Kalshi's legitimate business arrangements into an association-in-fact enterprise, which fails the second RICO element. *See* Compl. ¶ 150. RICO defines "enterprise" to include legal entities (*e.g.*, a corporation) or "a group of persons associated together," commonly called an "association-in-fact" enterprise. *United States v. Torres*, 191 F.3d 799, 805-06 (7th Cir. 1999). When pleading such an enterprise, it is not enough to characterize "ordinary business dealings" as a RICO association-in-fact. *Stachon v. United Consumers Club, Inc.*, No. 98 C 7020, 1999 WL 971284, at *3 (N.D. Ill. Oct. 21, 1999) (finding "no case law to support that a purchasing club's (or any corporation's) ordinary business dealings … constitute a structure"), *aff'd*, 229 F.3d 673 (7th Cir. 2000). In assessing alleged RICO enterprises, the Seventh Circuit has routinely "distinguished between two situations: a run-of-the-mill commercial relationship" and a "truly joint enterprise" premised on an unlawful "common interest." *Bible*, 799 F.3d at 655-56 (citing *United Food & Com. Workers Unions & Emps. Midwest Health Benefits Fund v. Walgreen Co.*, 719 F.3d 849, 855 (7th Cir. 2013) ("This type of interaction, however, shows only that the defendants had a commercial relationship, not that they had joined together to create a distinct entity for purposes

of improperly filling … prescriptions.")); *see also United Food*, 719 F.3d at 856 ("The allegations in the complaint do not indicate how the cooperation in this case exceeded that inherent in every commercial transaction between a drug manufacturer and pharmacy ….); *RSM Prod. Corp. v. Freshfields Bruckhaus Deringer U.S. LLP*, 682 F.3d 1043, 1051 (D.C. Cir. 2012) (finding plaintiff failed to plausibly allege a claim under § 1962(c)-(d) because "the complaint alleges no conduct by Freshfields beyond the provision of normal legal services in arbitration").

Plaintiff's allegations are insufficient to establish a RICO "enterprise." Plaintiff alleges that Robinhood entered into an agreement with Kalshi, Compl. ¶ 12, under which Robinhood is paid commissions (which Plaintiff calls "direct revenue-sharing"), *id.* ¶ 161, and that these activities constitute a so-called "Gaming Racket" "with a common purpose: to design, market, distribute, and widely disseminate event contracts based on sports outcomes," *id.* ¶ 152. The Complaint cannot fairly be said to describe anything other than a lawful business arrangement—precisely the kind of pleading that is insufficient to allege a RICO enterprise. *See United Food,* 719 F.3d at 856. The regulatory context in which Kalshi and Robinhood operate highlights this pleading deficiency. Allegations that Robinhood is a "futures commission merchant" that has entered into an agreement with "Kalshi to offer a prediction market hub," Compl. ¶ 13, reflect nothing more than the FCM-DCM relationship between Robinhood and Kalshi. *See* 7 U.S.C. § 1a(28)(A). The CEA and CFTC regulations require a FCM to route trades for execution on a DCM, subject to the DCM's rules.[20]

V. PLAINTIFF FAILS TO PLEAD A CLAIM AGAINST ROBINHOOD MARKETS, INC.

This Court should also dismiss all claims against Robinhood Markets, Inc. ("RHM"). A parent corporation is not liable for the acts of a subsidiary simply by virtue of its ownership of the subsidiary. *See Steven v. Roscoe Turner Aeronautical Corp.*, 324 F.2d 157, 161 (7th Cir. 1963).

[20] *See* CFTC Release No. 9091-25, *CFTC Staff Issues FCM FAQs* (June 30, 2025), https://www.cftc.gov/PressRoom/PressReleases/9091-25 ("FCMs are financial institutions that perform critical functions necessary for the efficient operation of the futures and cleared swaps markets regulated by the Commission, including event markets operated by designated contract markets.").

Plaintiff does not allege that RHM is involved in the event contracts agreement with Kalshi that gives rise to this action. Plaintiff alleges "Defendant Robinhood Derivatives LLC" is the entity that is a "futures commission merchant" and "the division of Robinhood that has partnered with Kalshi to offer a prediction market" and that RHM "is the parent company of all other Robinhood entities." Compl. ¶¶ 12-13. Plaintiff alleges no facts supporting liability against RHM specifically.

CONCLUSION

For the reasons here and in Kalshi's Motion, Robinhood requests that this Court dismiss all claims with prejudice.

Dated this 21st day of November, 2025.

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