IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MANFRED L.S. NARE, Individually, as Parents, Natural Guardians and Next Friends of M.N., a minor child; and GWLADYS K. NARE, Individually, as Parents, Natural Guardians and Next Friends of M.N., a minor child;

Plaintiffs,

vs.

OMAHA DISCOVERY TRUST, a Nebraska Corporation;

Defendant.

8:25CV48

MEMORANDUM & ORDER

This is a racial discrimination case in which Plaintiffs Manfred L.S. Nare and Gwladys K. Nare, individually and as the guardians of minor child M.N., claim Defendant Omaha Discovery Trust d/b/a Kiewit Luminarium violated 42 U.S.C. §§ 1981, 1982, 2000a, and 2000a-2, as well as the Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1602, by granting free admission to members of federally recognized Native American tribes. *See generally* Filing No. 1. It comes before the Court on Defendant Omaha Discovery Trust's Motion to Dismiss for failure to state a claim. Filing No. 8. For the reasons stated herein, the Court grants Defendant's motion to dismiss.

I. BACKGROUND

In October 2023, Defendant announced to the public, via its website, that it would grant free admission to the Kiewit Luminarium ("Luminarium"), a science and art museum in Omaha, to members of federally recognized Native American tribes upon presentation of their membership papers. Filing No. 1 at 9. On February 10, 2024, Plaintiffs, who are

Black, prepaid the full admission price to gain entrance to the Luminarium. Filing No. 1 at 10. The next day, Plaintiffs went to the Luminarium, presented their tickets for entrance, and then demanded a full refund for the admissions price they had paid. Filing No. 1 at 11. Plaintiffs allege Defendant rejected the demand for a refund "because [Plaintiffs] are not Native Americans." *Id.* Plaintiffs claim Defendant's actions have caused them to suffer loss of dignity, emotional harm, the deprivation of their federal civil rights, and general and special damages. Filing No. 1 at 12.

On February 5, 2025, Plaintiffs filed this suit against Defendant. *See generally* Filing No. 1. Under the first cause of action, they assert Defendant violated 42 U.S.C. §§ 2000a and 2000a-2 by discriminating based on race in a place of public accommodation. Filing No. 1 at 15–19. Plaintiffs' second and third causes of action claim Defendant violated 42 U.S.C. §§ 1981 and 1982 by interfering with Plaintiffs' contractual rights based on their race. Filing No. 1 at 24–25 and 28–29. Finally, in their fourth cause of action, Plaintiffs allege Defendant's policy is an unfair practice of trade or commerce, violating the Nebraska Consumer Protection Act ("CPA"), Neb. Rev. Stat. § 59-1602. Filing No. 1 at 30–31.

II. DISCUSSION

Defendant moves to dismiss all claims against it under Fed. R. Civ. P. 12(b)(6).

A. Standard of Review

Under the Federal Rules of Civil Procedure, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 n.3 (2007). "Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the . . . claim

is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Twombly*, 550 U.S. at 555). In order to survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the plaintiff's obligation to provide the grounds for his entitlement to relief necessitates that the complaint contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. "Factual allegations must be enough to raise a right to relief above the speculative level." *Id.*

Under *Twombly*, a court considering a motion to dismiss may begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the presumption of truth. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Although legal conclusions "can provide the framework of a complaint, they must be supported by factual allegations." *See id.* (describing a "two-pronged approach" to evaluating such motions: First, a court must accept factual allegations and disregard legal conclusions; and then parse the factual allegations for facial plausibility). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

B. The Complaint Does Not Adequately State a Claim Upon Which Relief Can Be Granted.

1. Plaintiffs' allegations do not amount to racial discrimination prohibited under 42 U.S.C. §§ 1981, 1982, 2000a, and 2000a-2.

Plaintiffs allege Defendant's policy to grant free admission to members of federally recognized Native American tribes constitutes racial discrimination prohibited by 42 U.S.C. §§ 1981, 1982, 2000a, and 2000a-2. Filing No. 1 at 15, 18, 24–25, and 28–29. Defendant argues Plaintiffs have failed to state a claim since tribal membership is not a

racial classification, and, therefore, the policy cannot be deemed racially discriminatory. *See* Filing No. 9 at 2–4.

Under 42 U.S.C. §§ 2000a and 2000a-2, a public place of accommodation is prohibited from discriminating based on "race, color, religion, or national origin." 42 U.S.C. § 2000a(a); *see also* 42 U.S.C. § 2000a-2. Similarly, 42 U.S.C. § 1981 condemns racial discrimination by securing the "same right" for all persons in the United States "to make and enforce contracts . . . as is enjoyed by white citizens." 42 U.S.C. § 1981(a); *see also* 42 U.S.C. § 1982 (providing all United States citizens the same right "to inherit, purchase, lease, sell, hold, and convey real and personal property").

Here, Plaintiffs have failed to state a claim since the complaint does not plausibly allege Defendant engaged in racial discrimination. The Court agrees with Defendant that tribal membership is a political classification rather than a racial one. The Supreme Court has, on numerous occasions, found Native American tribes to be quasi-sovereign entities rather than racial groups, thereby barring claims based racial discrimination. *See Morton v. Mancari*, 417 U.S. 535, 554 (1974) ("Here, the preference [for Native American employees at the Bureau of Indian Affairs] is reasonably and directly related to a legitimate, nonracially based goal."); *United States v. Antelope*, 430 U.S. 641, 646 (1977) (finding the respondents "were not subjected to federal criminal jurisdiction because they [were] of the Indian race but because they [were] enrolled members of the Coeur d'Alene Tribe").

Plaintiffs argue tribal membership should be considered a racial classification here, as Defendant is not a part of the federal government and, therefore, does not have "special obligations toward Indians." Filing No. 14 at 9–10 (quoting *United States v.*

Eagleboy, 200 F.3d 1137, 1138 (8th Cir. 1999)). The Court disagrees with Plaintiffs that tribal membership becomes a racial classification simply because the federal government is not involved. In *Eagleboy*, the Eighth Circuit Court of Appeals rejected a selective-prosecution argument made by a non-tribal member who was charged with violating the Migratory Bird Treaty Act. *Id.* The policy was not to charge tribal members with similar crimes, which the defendant argued amounted to racial discrimination. *Id.* The Court rejected this argument, noting that the policy's "criterion is tribal membership, not race." *Id.* As an alternate reason why it rejected the selective-prosecution argument, the Court also stated, "Moreover, special programs and exemptions for members of Indian tribes have long been upheld because of the federal government's special obligations toward Indians." *Id.* Thus, *Eagleboy*'s holding was based on tribal membership being distinct from race, not on the fact the United States government was involved. Likewise, here, the membership policy is based on tribal membership exclusively, not race. This case is legally indistinguishable from *Eagleboy*.

Plaintiffs also fail to explain how tribal membership should be equivalent to race. The tribes themselves have the authority, as quasi-sovereign entities, to determine membership eligibility. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55–56 (1978) (noting that Indian Tribes are distinct political communities which retain the right of self-government, including determining membership). Tribes may extend membership to people based on factors other than race. There is no basis to equate tribal membership with race. As pled, the Plaintiffs did not receive free admission since they did not have membership in a federally recognized Native American tribe, not because of any reason

involving race. Filing No. 1 at 9; *see Eagleboy*, 200 F.3d at 1139 ("[A]ll that matters is that [they were] not . . . member[s] of a federally-recognized tribe.").

Since Plaintiffs have only alleged the policy granted free admission based on tribal membership, a political classification, they have failed to state a claim under 42 U.S.C. §§ 1981, 1982, 2000a, and 2000a-2. The Defendant's motion to dismiss is granted with respect to the first three causes of action.

2. Plaintiffs fail to state a claim under the Nebraska Consumer Protection Act.

Plaintiffs' claim under the Nebraska Consumer Protection Act likewise fails to state a claim under which relief can be granted. The facts alleged fail to plausibly assert Defendant was engaged in racial discrimination. Further, Plaintiffs fail to assert the Nebraska CPA applies to racial discrimination cases, nor do they assert any other theory as to how the Defendant's actions constitute an unfair practice in the conduct of trade or commerce under the CPA.

a. As there is no racial discrimination, Plaintiffs fail to allege an unfair practice committed by Defendant.

Under the CPA, "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce shall be unlawful." Neb. Rev. Stat. § 59-1602. Plaintiffs allege Defendant acted unfairly in the conduct of commerce when it refused to give them a refund "because [Plaintiffs] are not Native Americans." Filing No. 1 at 11. Plaintiffs do not explain how this amounts to an unfair method of competition; however, their overall argument implies they think this is racial discrimination, similar to their federal causes of action. *See generally* Filing No. 1. Assuming Plaintiffs are arguing the policy is an unfair method of competition for being racially discriminatory, the plaintiffs have failed to state a cause of action. As discussed above, Native American tribal

membership is a political rather than a racial classification. *See* *Morton*, 417 U.S. at 554; *Antelope*, 430 U.S. at 645–47. Since tribal membership is a political classification, the Plaintiffs' factual allegations do not lead to a plausible inference that the denial of a refund was racial discrimination. Therefore, there was no race discrimination, and Defendant's motion to dismiss should be granted with respect to this fourth cause of action.

b. Nebraska has never recognized racial discrimination as an unfair practice covered by the Consumer Protection Act.

Even if the Court were to find Defendant's acts constituted racial discrimination, it is not apparent the Nebraska CPA covers racial discrimination. In *McNichols v. Creighton Federal Credit Union*, the Nebraska Court of Appeals found the lack of discrimination based on race to be one reason among many why the plaintiff's CPA claim failed but did not go so far as to say a race-based policy would make a viable CPA claim. *McNichols v. Creighton Fed. Credit Union*, No. 8:18-CV-244, 2019 WL 13418606, at *3–4 (D. Neb. July 10, 2019). Other Nebraska courts have not had occasion to address the issue, and courts addressing other state consumer-protection laws have declined to extend coverage to race discrimination. *See* *Mayoral v. WMC Mortg., LLC.*, No. 08 C 7292, 2009 WL 3272697, at *5 (N.D. Ill. Oct. 6, 2009) (declining to extend consumer protection coverage to race discrimination where there was no state case law doing the same). Accordingly, the Court cannot say that a race discrimination claim, even if supported by the facts of the case, would state a valid Nebraska CPA claim.

c. Plaintiffs fail to state factual allegations satisfactory under *Twombly* and *Iqbal*.

Moreover, Plaintiffs' cause of action under the CPA cannot survive a Fed. R. Civ. P. 12(b)(6) motion as the pleadings fail to adequately state factual allegations in support of its claim. *Twombly* and *Iqbal* require that the allegations pled by the plaintiff be more

than mere legal conclusions to survive a motion to dismiss. *Twombly*, 550 U.S. 554, 564–65; *Iqbal*, 556 U.S. at 679. The Plaintiffs must assert factual allegations that "plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679. To state a claim under the CPA, the Plaintiffs must allege facts that support a claim that Defendant was engaged in an unfair method of competition or an unfair or deceptive act. Neb. Rev. Stat. § 59-1602. Here, the Plaintiffs do not meet that bar. Plaintiffs allege that Defendant's policy grants free admission to members of federally recognized Native American tribes and that Plaintiffs did not receive a refund for admission tickets under this policy. Filing No. 1 at 9–11. Plaintiffs allege this policy is "an unfair practice of trade or commerce." Filing No. 1 at 31. Plaintiffs do not explicitly allege the policy was racial discrimination in violation of the CPA. *See* Filing No. 1 at 1–12, 30–31. As discussed, the racial discrimination argument fails regardless. Further, Plaintiffs do not assert any other theory on how Defendant's policy violated the CPA. The complaint fails to allege how the admissions policy affects the conduct of trade or injured the Plaintiff in his business or property and contains no supporting facts or allegations from which the Court can glean the same. *See Twombly*, 550 U.S. at 555 ("[A] formulaic recitation of the elements of a cause of action will not do.").

In Plaintiffs' brief in opposition to defendant's motion to dismiss, Plaintiffs argue their tickets are "property" but do not explain how that property was "injured." Filing No. 14 at 6 n.4. Even if this were persuasive, the plaintiffs may not amend their complaint through a brief in opposition to a motion to dismiss. *Gallagher v. City of Clayton*, 699 F.3d 1013, 1022 (8th Cir. 2012) ("It is a basic principle that the complaint may not be amended by the briefs in opposition to a motion to dismiss, nor can it be amended by the briefs on

appeal."). As Plaintiffs have failed to put forth well-pleaded factual allegations that "plausibly give rise to an entitlement to relief," Defendant's motion to dismiss is granted for the claim under the Nebraska CPA.

III. CONCLUSION

Plaintiffs have failed to state a claim against Defendant on which relief can be granted. Therefore, Defendant's motion to dismiss for failure to state a claim, Filing No. 8, is granted for all four causes of action.

IT IS ORDERED:

1. Defendant's Motion to Dismiss, Filing No. 8, is granted.
2. The Court will enter a separate judgment.

Dated this 8th day of October, 2025.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge