

No. 25-12912-AA

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NICOLAS A. MANZINI

Plaintiff-Appellant

vs.

TALBERT CYPRESS and LUCAS K. OSCEOLA

Defendants-Appellees

*On Appeal from the United States District Court
for the Southern District of Florida*

District Court Docket No. 1:24-cv-24670-RAR

APPELLANT'S OPENING BRIEF

Nicolas A. Manzini
6426 S.W. 9th Street
West Miami, FL 33144
Tel.: (305) 335-3854
manzini404@aol.com

Appellant, In Propria Persona

No. 25-12912-AA
Nicolas A. Manzini v. Talbert Cypress, et al.

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Eleventh Cir. R. 26.1-1(a)(1) and other applicable rules, appellant Nicolas A. Manzini states that the following persons and entities have (or may have) an interest in the outcome of this proceeding:

Ajizian, Christopher Ara, Esq., *Attorney for Defendants (Appellees)*

Cypress, Talbert, *Defendant-Appellee*

Friedman, Todd Rapp, Esq., *Attorney for Defendants (Appellees)*

Kula, Elliot B., Esq., *Attorney for Appellees*

Manzini, Nicolas A., *Plaintiff-Appellant (pro se)*

Materi, Jennifer B., *Gen. Couns., Miccosukee Tribe of Indians of Florida*

Miccosukee Tribe of Indians of Florida, *Non-Party*

National Indian Gaming Commission, *Non-Party*

Osceola, Lucas K., *Defendant-Appellee*

Ruiz, Hon. Rodolfo Armando II, *U.S. District Judge*

STATEMENT REGARDING ORAL ARGUMENT

Appellant Nicolas A. Manzini in propria persona, plaintiff below, a disabled former lawyer who previously practiced before the Court as a member of its bar, requests oral argument as he believes that it will assist the parties to elucidate for the panel the issues for review beyond the constraints of their briefs – specifically, why it was reversible error for the district court to dismiss the action below with prejudice and without leave to amend for plaintiff to pursue his claim for equitable relief to enforce a provision of the Indian Gaming Regulatory Act of 1988; why it was reversible error for the district court to determine that an amendment of plaintiff’s complaint would be futile; and why it was an abuse of discretion for the district court to deny plaintiff’s timely post-dismissal motion which properly sought leave to amend his complaint.

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he properly sought leave to amend in his post-dismissal motion, the complaint could have been saved by amendment especially in light of the belated Cayuga Nation opinion, and there was no other significant reason to deny leave to amend such as undue delay, bad faith or dilatory motive on plaintiff's part, repeated failures to cure deficiencies in the complaint by amendments previously allowed, or undue prejudice to defendants by virtue of the allowance of an amendment

III. The district court's denial of leave to amend was also an abuse of discretion because plaintiff, a pro se litigant, had amended his complaint once as a matter of course for the sole purpose of alleging diversity jurisdiction *after* he was misled to do so by the district court itself through its sua sponte challenge to plaintiff's assertion of federal question jurisdiction and its erroneous reference to the defendants as "foreign defendants," a finding that neither prompted nor suggested by plaintiff, and plaintiff never had an opportunity to amend his complaint after it was challenged in defendants' Rule 12(b)(6) motion

IV. The district court further abused its discretion by denying plaintiff's post-dismissal motion as it misapprehended the purposes for which said motion was authorized, namely a) to reconsider its judgment of dismissal, b) to seek leave b) to amend the complaint to pursue only equitable relief in light of the belated Cayuga Nation decision evincing either a change in the law or clarification that equitable remedies are available under IGRA or persuasive authority from a sister district court, and c) to correct errors of fact and conclusions of law in the dismissal order and as a device to relitigate an original issue decided by the court, i.e., whether plaintiff has a viable claim for equitable relief to enforce an IGRA provision against defendants

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STATEMENT OF JURISDICTION

As the district court ultimately found, its original jurisdiction to hear plaintiff's action rests on 28 U.S.C. section 1331 because he seeks relief to enforce a provision of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. section 2701 et seq., namely, the assurance in section 2702(b) of said Act that tribal gaming will be conducted “fairly and honestly” by its operators.

This Court has jurisdiction under 28 U.S.C section 1291 because this is an appeal from a final decision of the district court.

The district court dismissed the pro se plaintiff's action with prejudice and without leave to amend on July 23, 2025 finding that any amendment to the complaint would be futile. On August 1, 2025, plaintiff filed his post-dismissal motion pursuant to Fed. R. Civ. P. 59 seeking to vacate the district court's dismissal order and therein sought leave to amend his complaint to pursue just his claim for equitable relief. The district court denied plaintiff's

post-dismissal motion by a paperless order docketed on August 4, 2025 that was later reproduced verbatim in a paper order entered on August 6th.

This is a timely appeal from a final order of the district court that disposed of all parties' claims.

INTRODUCTION

Appellant Nicolas A. Manzini, plaintiff below, shall be referred to as "Manzini." Appellee Talbert Cypress, a defendant below, shall be referred to as "Cypress." Appellee Lucas K. Osceola, also a defendant below, shall be referred to as "Osceola." The Miccosukee Tribe of Indians of Florida, a non-party, shall be referred to as the "Tribe." The National Indian Gaming Commission, also a non-party, shall be referred to as "NIGC." The Indian Gaming Regulatory Act of 1988 shall be referred to as "IGRA."

The record on appeal are the relevant docket entries in the proceeding below and shall be cited as "[ECF No. ____]" or "[ECF No. ____, page ____]."

All emphasis is ours unless otherwise indicated.

STATEMENT OF THE ISSUES FOR REVIEW

Whether it was reversible error for the district court to dismiss Manzini's action against Cypress and Osceola with prejudice and without leave to amend his complaint based upon its finding of futility.

Whether it was an abuse of discretion for the district court to deny Manzini's post-dismissal motion which sought leave to amend his complaint to pursue his claim for equitable relief only against Cypress and Osceola in light of the belated decision in Cayuga Nation (full cite in next section).

STATEMENT OF THE CASE

A. Course of Proceedings and Dispositions in the Court Below

Manzini commenced the action below in November, 2024. [EFC No. 1]. After Cypress and Osceola evaded personal service of process, Manzini requested leave of court to serve them through other means. [EFC No. 6].

In granting Manzini's request, the district court erroneously referred to Cypress and Osceola as "*foreign defendants*," a finding that was neither prompted nor suggested by Manzini. [ECF No. 8, page 2]. Shortly thereafter but before Cypress and Osceola appeared in the case, the district court issued its sua sponte challenge to Manzini's assertion of federal question jurisdiction. [ECF No. 9]. As a result of these dual pronouncements by the district court, Manzini filed his *Amended Complaint* as a matter of course and solely for the purpose of adding diversity of citizenship as an alternative basis of subject matter jurisdiction. [ECF No. 12]. In his second cause of action, Manzini sought equitable relief in the form of declaratory and injunctive relief requiring Cypress and Osceola to comply with IGRA and

NIGC regulations that mandate the fair and honest operation of tribal gaming by its operators. At paragraph 33 of his *Amended Complaint*, Manzini requested the equitable remedy of disgorgement, albeit it was not under his cause of action for equitable relief. [ECF No. 12, page 13].

Cypress and Osceola then moved to dismiss Manzini's *Amended Complaint* asserting a failure to state a cause of action pursuant to Fed. R. Civ. P. 12(b)(6) and lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). [ECF No. 21]. Among other things, their motion argued that the district court lacked both federal question and diversity jurisdiction; that Cypress and Osceola are cloaked with sovereign immunity; and that IGRA does not provide a private right of action against them. Manzini timely filed his opposition to their motion. [ECF No. 27].¹

On July 23, 2025, the district court entered its final order dismissing the case with prejudice and expressly held that it would be futile to let Manzini

¹ Since August, 2024 and during the entire pendency of the action below, pro se litigant Manzini has been catastrophically ill and undergone numerous surgeries on his feet, legs, eyes, and bladder and was frequently hospitalized. His health conditions include bladder cancer, stage 5 kidney disease, and gangrene/osteomyelitis of his right foot. During that time, he underwent two rounds of chemotherapy, ongoing dialysis, and the amputation of his big toe. *All of that prolonged medical treatment, including the toe amputation, transpired during the briefing of Cypress and Osceola's motion to dismiss in the proceeding below, a fact that was disclosed to the district court in Manzini's post-dismissal motion.*

amend his complaint. [ECF No. 40]. The court found that it had federal question jurisdiction [ECF No. 40, pages 13-15] and that Cypress and Osceola are not cloaked with sovereign immunity [ECF No. 12, pages 16-18]. However, it based its finding of futility on what it deemed to be a judicial consensus that IGRA does not afford a private right of action. [ECF No. 40, pages 19-24, 27].

On March 31, 2025, *after* briefing had concluded in the action below, the U.S. District Court for the Northern District of New York issued an initial order denying a defense motion to dismiss an action seeking equitable relief for violations of IGRA. See Cayuga Nation v. New York State Gaming Commission, 5:24-cv 537-BKS/TWD (N.D.N.Y., March 31, 2025) [ECF No. 61]. (The Cayuga Nation court reaffirmed that initial ruling and rendered it final on July 30, 2025 after the defendants in that case renewed their motion to dismiss. *Id.* at [ECF No. 83]).

Although the parties in Cayuga Nation conceded (and the district court agreed) that IGRA does not provide a private right of action, that court nonetheless pertinently held that it could ***not*** find that in enacting IGRA “*Congress intended to foreclose equitable relief.*” The Cayuga Nation court also cited other relevant precedents to the effect that courts are not precluded from “*issuing equitable relief*” under similar circumstances. Therefore, the

Cayuga Nation court denied the defense motion to dismiss and months later reaffirmed its ruling after the defendants there renewed their motion.

Based mostly on the rationale of the belated Cayuga Nation decision, Manzini on August 1, 2025 timely filed a post-dismissal motion pursuant to Fed. R. Civ. P. 59 seeking to vacate the district court's judgment of dismissal [ECF No. 41] and therein sought leave to amend his *Amended Complaint* to pursue just his claim for equitable relief against Cypress and Osceola, including the equitable remedy of disgorgement of their ill-gotten gains. [ECF No. 41, pages 2, 17-18].

In a lightning-quick and peremptory ruling only 24 business hours later, the district court denied Manzini's post-dismissal motion via a paperless order that was docketed on August 4, 2025 [ECF No. 42] and then converted it into a paper order on August 6, 2025. [ECF No. 44]. In short, the district court appeared to take umbrage that Manzini was trying to "*relitigate old matters, raise argument, or present evidence that could have been raised prior to the entry of judgment.*" But this would have been impossible to do inasmuch as the Cayuga Nation decision was not published until *after* briefing in the action below had concluded and the Cayuga Nation decision was not final until July 30, 2025, that is, seven (7) days *after* the entry of the district court's dismissal order that is now under review.

In denying Manzini's post-dismissal motion, the district court said nary a word about his request for leave to amend the complaint which was set forth in the motion, save and except for an oblique comment to the effect that the Cayuga Nation decision was inapposite to this action because the plaintiff there was an Indian tribe, not a private person like Manzini. But needless to say, IGRA patently protects *both* tribal gaming operators and the gaming public.

B. Statement of the Facts

All of the facts comprehensively detailed below are derived from Manzini's *Amended Complaint*. [ECF No. 12]. While it is not a model of clarity, Manzini directs the Court's attention to the totality of the *Amended Complaint* which contains *all* of the facts that were before the district court.

Both Cypress and Osceola, in their respective capacities as the main officers of the business council and gaming agency of the Tribe, are responsible for overseeing tribal gaming operations, but have taken actions that are in bad faith and fall outside the scope of their lawful authority as tribal officers in fact and under IGRA. At their direction, the Tribe made false and misleading statements to deceive Manzini, a member of the gaming public as defined by IGRA, and used and continues to use deceit to cause countless patrons like Manzini to act to their disadvantage. Manzini

alleged that those false and misleading representations violate the letter and spirit of IGRA and NIGC regulations. [ECF No. 12, pages 1-2]

Manzini is an individual who as of the filing of his *Amended Complaint* is 74 years of age and a resident of Miami-Dade County, Florida. The Tribe is a federally recognized Indian tribe which for the past 34-plus years has owned and operated the “Miccosukee Resort & Gaming Casino” located at 500 S.W. 177th Avenue in Miami-Dade County, Florida. The Tribe’s lands are situate primarily within the boundaries of Miami-Dade and Broward Counties, Florida. It is an organization composed of individuals who are of varying degrees of blood quantum of Miccosukee Indian descent. Cypress and Osceola are the Tribe’s chief officers and are responsible for guiding the Tribe’s business policies and overseeing its tribal gaming operations. [ECF No. 12, page 2-3]

The district court expressly found that federal question jurisdiction exists because Cypress and Osceola are alleged to be tribal officers who have violated and are violating federal law, to-wit, IGRA and NIGC regulations, as they have acted and continue to act in bad faith and beyond the scope of their authority as such. [ECF No. 40, pages 13-15].

In the second cause of action of his *Amended Complaint*, Manzini alleged a claim for equitable relief against Cypress and Osceola expressly requiring

judicial interpretation of discrete provisions of IGRA and NIGC regulations. [ECF No. 12, pages 16-17]. Indeed, at least one other district court has recently recognized a right to equitable relief under IGRA that Congress did not foreclose when it enacted the Act. See “Argument” section below. Thus Manzini in his *Amended Complaint* sought declaratory and injunctive relief requiring Cypress and Osceola to comply with IGRA and NIGC regulations that mandate the fair and honest operation of tribal casinos, including the equitable remedy of disgorgement of their ill-gotten gains which was requested at paragraph 33 of the *Amended Complaint*, albeit not under the second cause of action. [ECF No. 12, page 13].

The specific acts and omissions by Cypress and Osceola alleged in Manzini’s *Amended Complaint* [ECF No. 12, pages 5-11] are as follows:

Under their oversight, the Tribe’s casino has been taxing its players by manipulating the cash-out system employed by its electronic gaming systems (slot machines). A player’s decision to cease play before he has lost all his or her money is commonly referred to as making the decision to cash out. Cashing out is the conversion of the slot machine credits back into U.S. currency. When the player decides to cash out, on the overwhelming number of the casino’s machines, he presses a button or display marked “cash out.” In early generations of slot machines, coins would be dispensed

at that point. In today's slot machines, instead, the machine automatically generates a gaming voucher that reflects and represents the amount owed by the casino to the player. Since the adoption of electronic slot machines, gaming vouchers have been used as a convenience to the casino; the casino does not have to stock each slot machine with cash and can instead stock a few automatic cash-out machines (kiosks). For decades, players would insert a gaming voucher into the kiosk at most casinos and the kiosk would pay them in exact change, in cash.

During the COVID-19 pandemic, most casinos grappled with a coin shortage. Similarly situated casinos posted conspicuous signs informing customers that they were unable to pay exact change due to the coin shortage. Most of the casino's competitors adopted responsible practices to notify players of their inability to pay exact change. Under Cypress and Osceola's supervision, the Tribe's casino was far less forthcoming.

Since on or about 2021, the Tribe's casino has been keeping the change off of hundreds of thousands of gaming vouchers, essentially robbing its customers a few cents at a time, on millions of transactions. When a player inserts a gaming cash-out voucher into a kiosk at the casino, the kiosk rounds down to the nearest dollar and pays that amount in cash. The kiosk then generates a "change voucher" that represents the amount of change that

was not paid out. For example, if a player inserts a cash-out voucher for \$1.35, the kiosk pays out a single dollar and generates a change voucher for 35 cents. The change voucher is, more often than not, a vehicle for converting players' funds into the casino's funds. The change voucher is not cash and has no value outside of the casino; it can only be cashed at the main cashier's window, commonly referred to as the casino "cage."

Until October, 2024, there were no conspicuous signs posted at the Tribe's casino to alert players the casino does not pay change at the kiosks and no printed language on the cash-out voucher itself to alert customers to that fact. Indeed, the only notice to the unwitting patrons was an electronic message which was displayed by the kiosk *after* a patron had inserted his or her cash-out voucher: "This kiosk does not dispense coins." The message did not direct patrons to the cage either before or after dispensing the change voucher or inform patrons that exact (coin) change may only be obtained at the cage. Worse yet, there was no notice on either the cash-out vouchers dispensed by slot machines or the change vouchers dispensed by kiosks that they could only be redeemed for exact change at the cage. In fact, all that the cash-out and change vouchers say vis-à-vis payment *even now* (after ManzinI filed the action below) is that the ticket is void after 30 days. This has the same eventual effect of depriving players of their change.

As alleged in the *Amended Complaint* and fueled by Manzini's personal observations, virtually every patron chooses to trash the change vouchers dispensed by the kiosks or stick them in his or her pocket where they will expire in 30 days. The Tribe's casino is littered with discarded (i.e., unredeemed) change vouchers varying in amounts of less than \$1.00.

On October 2, 2024, Manzini notified the Tribe that its casino failed to put an average player on reasonable notice that vouchers could only be converted into cash at the cage and thus made it difficult or inconvenient for an average player to quickly convert a cash-out or change voucher into cash. During the COVID-19 pandemic, similarly situated casinos 1) posted conspicuous signs informing customers that they were unable to pay exact change due to the coin shortage *and* 2) they amended the printed language on the vouchers dispensed by slot machines to alert players that the kiosks do not dispense exact change,² a practice which has become the industry standard in South Florida even at the casinos operated by the Seminole Tribe of Florida, which is also a federally recognized Indian tribe.

Under Cypress and Osceola's guidance, the Tribe refused to take such measures. Indeed, until October, 2024, the Tribe's casino did not inform

² However, this practice is not being followed by the Tribe's casino, where a majority of players will not stand in line at the kiosks and again at an even longer line at the cashier to reap just a few cents.

patrons *at all* that the kiosks did not pay coin change and/or that coin change could only be had by taking vouchers to the casino cage, which was in direct violation of the letter and spirit of IGRA and NIGC regulations that require tribal gaming operators to act in a fair and honest manner.³ Thus, on October 17, 2024, Manzini reported the Tribe's violation to the NIGC.

Sometime thereafter, the Tribe under Cypress and Osceola's guidance added the following signage to each one of its casino kiosks: "COINLESS UNIT: Tickets for coin may be redeemed at cashier or played at slot machine." This subsequent (but woefully insufficient) remedial measure taken by the Tribe under Cypress and Osceola's guidance was the direct and proximate result of Manzini's complaint and his report of violation to the NIGC; it would be admissible as evidence at trial to prove that it was always easily and readily available but for the Tribe's avarice and lucre under Cypress and Osceola's oversight. As the chief tribal officers, they have also made no amends (disgorgement) of their ill-gotten gains consisting of the

³ Section 2702 (b) of IGRA expressly declares that among the Act's purposes is "to assure that gaming is conducted fairly and honestly by both the operator [Tribe] and players." 25 C.F.R section 552.2 (e) (the NIGC's regulations) expressly states that Tribe's gaming ordinance must describe procedures for resolving disputes like this one between the gaming public and the Tribe.

provable sums they have retained in unredeemed change vouchers for the more than three-year period from 2021 until October, 2024.⁴

On October 31, 2024, Osceola in his official capacity as Assistant Chairman of the tribal gaming agency, replied to Manzini's report of the Tribe's violation to the NIGC by advising that, despite the Tribe's remedial measures as a result of Manzini's report to the NIGC, his complaint was "*without merit.*" Osceola's disingenuous rejection of Manzini's report to the NIGC also violates the letter and spirit of IGRA's express mandate that tribal gaming must be conducted in a fair and honest manner by its operators and NIGC regulations that require operators of tribal gaming must have procedures for resolving patron disputes.

Moreover, on October 14, 2024, shortly after he initially complained to the Tribe about its deceptive and unfair voucher policy, Cypress in his capacity as Chairman of the tribe's business council sent tribal police officers to Manzini's home in West Miami, Florida (where at the time he lived with his now-deceased 97-year old mother) to deliver a letter informing him that he is permanently banned from the Tribe's facilities and

⁴ The Tribe maintains a facility-based monitoring system that keeps track of unredeemed and/or expired cash-out and change vouchers and prints out an "Expired Tickets Report – System Totals" upon command. Manzini made an early document request for this information [ECF No. 20] but Cypress and Osceola predictably objected and moved to stay discovery.

territories and threatening him with arrest if he trespassed onto tribal land. Cypress' action was in obvious retaliation for Manzini engaging in the protected activity of reporting the Tribe's unfair and dishonest acts in violation of federal law (IGRA) to the NIGC.

C. Statement of Standards of Review

The standard of review applicable to a district court's order of dismissal with prejudice is de novo . Magluta v. Samples, 375 F. 3d 1269, 1273 (11th Cir. 2004).

The standard of review applicable to a district court's determination that amendment of the complaint would be futile is also de novo. Yost-Rudge v. City of Stuart, 2025 U.S. App. LEXIS 18017* (11th Cir. 2025) citing Harris v. Ivax Corp., 182 F. 3d 799, 802 (11th Cir. 1999).

The standard of review applicable to a district court's order denying leave to amend is abuse of discretion. Bryant v. Dupree, 252 F. 3d 1161, 1163 (11th Cir. 2001); Shipner v. E. Air Lines, Inc., 868 F. 2d 401, 406-407 (11th Cir. 1989) (“Rule 15(a) severely restricts the district court's freedom [to deny leave to amend]”).

The standard of review applicable to a district court's denial of a post-dismissal motion for leave to file an amended complaint is also abuse of discretion. Spanish Broad. Sys. of Florida v. Clear Channel Commc'ns, 376

F. 3d 1065, 1077 (11th Cir. 2004). When a plaintiff moves for leave to amend his complaint in a post-dismissal motion pursuant to Fed. R. Civ. P. 59 , the same standards apply as under Fed. R. Civ. P. 15(a), i.e., leave should be freely given. Scheffler v. Americold Realty Trust, 2023 U.S. App. LEXIS 14458* (11th Cir. 2023) citing Spanish Broad. Sys. of Florida, supra.

SUMMARY OF THE ARGUMENT

It was reversible error for the district court to dismiss Manzini's action with prejudice and without leave to amend and to expressly find that it was futile to permit Manzini to amend because 1) as a pro se plaintiff, he should have been afforded an opportunity to amend, 2) his claim for equitable relief could have been saved by amendment, and 3) by its finding of futility, the district court clearly misapprehended that IGRA does not foreclose courts from granting equitable relief.

The district court abused its discretion by denying Manzini's post-dismissal motion which timely and properly sought leave to amend the complaint because a) the complaint could have been saved by amendment especially in light of the belated Cayuga Nation decision, b) there was no other significant reason to deny leave to amend, c) Manzini had amended his complaint only once as a matter of course for the sole purpose of alleging diversity jurisdiction *after* he was misled to do so by the district court itself

through its sua sponte challenge to federal question jurisdiction and its gratuitous but erroneous reference to Cypress and Osceola as “*foreign defendants*” and d) the district court also misapprehended the purpose for which Manzini’s post-dismissal motion was intended and authorized.

ARGUMENT

I. Dismissal With Prejudice Was Reversible Error

Upon de novo review, it was error for the district court to dismiss the *Amended Complaint* with prejudice. Manzini’s second cause of action sought equitable relief in the form of declaratory and injunctive relief requiring Cypress and Osceola to comply with the provision of IGRA that mandates the fair and honest operation of tribal casinos by their operators. In enacting IGRA, Congress did *not* foreclose district courts from granting equitable relief to enforce the Act. See Cayuga Nation, *supra*.

In his *Amended Complaint*, Manzini also sought the equitable remedy of disgorgement of Cypress and Osceola’s ill-gotten gains, i.e., the sum of unredeemed casino cash-out and change vouchers by which they have been unjustly enriched since their deceptive practices were implemented, relief that is generally authorized by federal courts to redress violations of federal law. See, e.g., Martin v. Bischoff, 2022 U.S. Dist. LEXIS 191308*; 2022 WL 105337394 (M.D. Fla. 2022); Bluegreen Vacations Unlimited, Inc. v.

Timeshare Laws, P.A., 673 F. Supp. 3d 1293*; 2023 U.S. Dist. LEXIS 86680** (S.D. Fla. 2023). This is an issue the district court *never* broached.

In the pivotal case of Kansas v. Nebraska, 574 U.S. 445 (2015), the U.S. Supreme Court's pertinent ruling can be summarized as follows: 1) in a law-equity determination, equity is presumed; 2) disgorgement beyond simple compensation is warranted; and 3) the insufficiency of other remedies justifies the reach to disgorgement.

Moreover, Fed. R. Civ. P. 8(a)(2) merely requires “a short and plain statement of the claim showing that the pleader is entitled to relief ...” and the second cause of action in the *Amended Complaint* clearly satisfies that standard. Even applying the Supreme Court’s heightened pleading standard under Twombly and Iqbal,⁵ the claim alleged in the second cause of action of the *Amended Complaint* which incorporates all of the facts alleged at paragraphs 10-30 thereof [ECF No. 12, pages 5-12] is plausible and can give rise to an entitlement to equitable relief.

With the benefit of hindsight and further research, Manzini concedes that the first cause of action in his *Amended Complaint* improperly sought compensatory damages and commingled various state law theories of

⁵ Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, 556 U.S. 662 (2009).

recovery that are not actionable under IGRA against Cypress and Osceola. To the extent the district court viewed that portion of Manzini's *Amended Complaint* as a shotgun pleading, it was error to dismiss it with prejudice and not allow repleader. Bailey v. Janssen Pharmaceutica, Inc., 288 Fed. Appx. 597, 603* (11th Cir. 2008) ("When faced with a shotgun complaint, we have encouraged defendants to make motions for more definite statements or courts to demand repleader--and not, as the case were, to dismiss a complaint with prejudice").

It was also error for the district court to dismiss the *Amended Complaint* with prejudice because, although he practiced law for decades, Manzini is a pro se plaintiff here. Dulcio v. EPA, 2025 U.S. App. LEXIS 18635* (11th Cir. 2025) citing Woldeab v. Dekalb Cty. Bd. Educ., 885 F. 3d 1289, 1291 (11th Cir. 2018) ("A pro se plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice"). See also Garcia v. Chiquita Brands Int'l, Inc., 48 F. 4th 1202, 1220 (11th Cir. 2022) ("We have explained that Rule 15(a)(2) severely restricts the district court's ability to dismiss with prejudice").

It was also error for the district court to base its finding of futility upon decisions cited in its dismissal order from courts that have held that IGRA does not provide a private right of action (for bodily injury and other

common law torts) because in those cases the plaintiffs patently did *not* seek equitable relief as Manzini does here, see Cayuga Nation, supra, nor did they demand a “*judicial interpretation of IGRA’s provisions*” pertaining to defendants’ conduct as Manzini expressly does at paragraph 6 of his *Amended Complaint*. [ECF No. 12, page 3].

“Dismissal pursuant to Rule 12(b)(6) is not appropriate *unless it appears beyond doubt* that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Magluta, supra, at 1273. Applying the rationale of the Cayuga Nation decision to this case, it is clear that the district court’s judgment of dismissal falls below that standard.

II. The District Court Also Abused Its Discretion

In his post-dismissal motion, Manzini asked the district court to vacate its judgment of dismissal and he also properly sought leave to amend his *Amended Complaint* to seek only equitable relief against Cypress and Osceola. Scheffler, supra (a plaintiff may move for leave to amend his complaint in a Rule 59 post-dismissal motion and the same standards apply after a judgment of dismissal has been entered, i.e., leave to amend should be freely given); see also Spanish Broadcasting, supra.

In Hargett v. Valley Fed. Sav. Bank, 60 Fed. 3d 754 (11th Cir. 1995), the Court succinctly quoted the Supreme Court’s holding in the landmark case of Foman v. Davis, 371 U.S. 178, 182 (1962):

“If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.-- then leave sought should, as the rules require, be ‘freely given.’” *Id.* at 761.

No such factors are present in this case. Manzini amended his complaint only once as a matter of course and solely to allege diversity of citizenship as an alternative basis of subject matter jurisdiction *after* he was misled into doing so by the district court itself: first, by its sua sponte challenge to Manzini’s assertion of federal question jurisdiction even before Cypress and Osceola appeared in the case; and second, by its gratuitous but erroneous reference to Cypress and Osceola as “*foreign defendants*” that was neither prompted nor suggested by Manzini.

In sum, Manzini never had a meaningful opportunity to amend his complaint after Cypress and Osceola filed their Rule 12(b)(6) motion.

Finally, the district court abused its discretion by denying Manzini’s post-dismissal motion made pursuant to Fed. R. Civ. P. 59 because it either misapprehended or interpreted too narrowly the purpose for which such a

motion was authorized. That rule's *Notes of Advisory Committee* pertinently state that it is an amalgamation of the petition for rehearing (former Equity Rule 68) and the motion for new trial (28 U.S.C. section 391). The rule itself states that a district court may grant rehearing "*for any reason*" for which rehearing has been granted in a suit in equity in federal court, see subsection 59(a)(1)(B), and that the court after a non-jury trial may open the judgment, amend findings of fact and conclusions of law or make new ones, see subsection 59(a)(2). Persuasive authority from another circuit even goes so far as to describe Fed. R. Civ. P. 59 as "*a device to relitigate the original issue*" decided by the district court. See U.S. v. Fiorelli, 337 F. 3d 282 (3rd Cr. 2003) citing Smith v. Evans, 853 F. 2d 155, 158-159 (3rd Cir. 1988).

The district court abused its discretion when it summarily denied Manzini's post-dismissal motion because it misapprehended the purpose of said motion and thus did not perform any of the judicial labor for which the motion was intended and authorized pursuant to Fed. R. Civ. P. 59.

CONCLUSION

The district court's order of dismissal should be reversed and this action remanded to the district court with directions to permit the filing of a *Second Amended Complaint* seeking only equitable relief .

By: /s/ Nicolas A. Manzini
Nicolas A. Manzini
Appellant, In Propria Persona

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of September, 2025, the foregoing *Appellant's Opening Brief* was filed with the Court using the CM/ECF system and that true and correct copies thereof were served electronically upon all attorneys and unrepresented parties listed on the CM/ECF service list for this proceeding.

By: /s/ Nicolas A. Manzini
Nicolas A. Manzini
6426 S.W. 9th Street
West Miami, Florida 33144
Tel. No.: (305) 335-3854
Manzini404@aol.com

Appellant, In Propria Persona