

2 **IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT**
3 **IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

4
5 **COMPLEX BUSINESS DIVISION**

6
7 **INTERNATIONAL COMMERCIAL ARBITRATION SUBSECTION**

8
9 **CASE NO.: 2017-024522-CA-47**

10
11 JEFFREY D. RUBINSTEIN,
12 JOE SHARPE, and
13 GUILLERMO BAKULA, and WALTER
14 GAMES, LLC, a Delaware Limited
15 Liability Company qualified to do, and
16 doing business in the State of Florida,

17
18 Plaintiffs,

19
20 v.

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22 MGBR, LLC, The INTERNATIONAL
23 COURT OF ARBITRATION OF THE
24 INTERNATIONAL CHAMBER OF
25 COMMERCE,

26
27 Defendants,

28
29 and

30
31 THE MOHEGAN TRIBE OF INDIANS
32 OF CONNECTICUT, a federally
33 recognized Indian Tribe, (hereinafter "The
34 Tribe"), and all the individual members of
35 the Tribe, individually, known as The
36 Mohegan Nation, and THE MOHEGAN
37 TRIBAL GAMING AUTHORITY, d/b/a
38 Mohegan Gaming & Entertainment, (the
39 "AUTHORITY"), an instrumentality of the
40 Mohegan Tribe Indians of Connecticut,
and its nine-member Management Board
("Management Board"), whose members

RUBINSTEIN & ASSOCIATES, P. A.

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4 also comprise the Tribal Council ("Tribal
5 Council"), KEVIN P. BROWN,
6 Individually and as a member of the Tribe,
7 and as Chairman of the Tribal Council and
8 of the Management Board of the
9 AUTHORITY, JAMES GESSNER JR.,
10 Individually and as a member of the Tribe,
11 and as Vice Chairman of the Tribal
12 Council and of the Management Board of
13 the AUTHORITY, KATHY
14 REGAN-PYNE, Individually and as a
15 member of the Tribe, and as
16 Corresponding Secretary of the Tribal
17 Council and of the Management Board of
18 the AUTHORITY, WILLIAM
19 QUIDGEON JR., Individually and as a
20 member of the Tribe and as a member of
21 the Tribal Council and of the Management
22 Board of the AUTHORITY, SARAH E.
23 HARRIS, Individually, and as a member
24 of the Tribe and as a member of the Tribal
25 Council and of the Management Board of
26 the AUTHORITY, MARK BROWN,
27 Individually and as a member of the Tribe
28 and as a member of the Tribal Council and
29 of the Management Board of the
30 AUTHORITY, THAYNE HUTCHINS
31 JR., Individually and as a member of the
32 Tribe and as a member of the Tribal
33 Council and of the Management Board of
34 the AUTHORITY, CHERYL TODD,
35 Individually and as a member of the Tribe
36 and as a member of the Tribal Council and
37 of the Management Board of the
38 AUTHORITY, JOE SMITH, Individually
39 and as a member of the Tribe and as a
40 member of the Tribal Council and of the
Management Board of the AUTHORITY,
and each of the foregoing specified

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4 individuals as Class Representatives of all
5 members of The Tribe and of The
6 Mohegan Nation, and on behalf of all
7 others so similarly situated,
8

9 Class Action Defendants.
10 _____ /

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12 **CLASS REPRESENTATION**

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14 **AMENDED COMPLAINT FOR DECLARATORY RELIEF AND**
15 **INJUNCTIVE RELIEF STAYING ARBITRATION**
16 **DAMAGES FOR DECEPTIVE AND UNFAIR TRADE PRACTICES,**
17 **VICARIOUS LIABILITY, AND**
18 **INJUNCTIVE RELIEF REVOKING ALL GAMING LICENSES IN**
19 **CONNECTICUT AND PENNSYLVANIA, AND**
20 **PROHIBITING GAMING IN BRAZIL, AND OTHER RELIEF**
21

22 **TRIAL BY JURY DEMANDED**

23
24 Plaintiffs, Jeffrey Rubinstein, Joe Sharpe, Guillermo Bakula, and Walter
25 Games, LLC, ("Walter Games"), file this Amended Complaint as a matter of right, and
26 sue Defendants, MGBR, LLC, The INTERNATIONAL COURT OF ARBITRATION
27 OF THE INTERNATIONAL CHAMBER OF COMMERCE, and sue the Class
28 Action Defendants, THE MOHEGAN TRIBE OF INDIANS OF CONNECTICUT,
29
30 a federally recognized Indian Tribe, (hereinafter "The Tribe"), (which, as more
31 particularly described, *infra*, in paragraph 7, waived sovereign immunity), and all the
32 individual members of the Tribe, individually, known as The Mohegan Nation, who
33 directly participate in the earnings and profits of all gaming activities of the Tribe,
34 thus establishing a juridical link, and THE MOHEGAN TRIBAL GAMING
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4 AUTHORITY, d/b/a Mohegan Gaming & Entertainment, (the "AUTHORITY"), an
5
6 instrumentality of the Mohegan Tribe Indians of Connecticut, and its nine-member
7
8 Management Board ("Management Board"), whose members also comprise the Tribal
9
10 Council ("Tribal Council"), KEVIN P. BROWN, Individually and as a member of the
11
12 Tribe, and as Chairman of the Tribal Council and of the Management Board of the
13
14 AUTHORITY, JAMES GESSNER JR., Individually and as a member of the Tribe,
15
16 and as Vice Chairman of the Tribal Council and of the Management Board of the
17
18 AUTHORITY, KATHY REGAN-PYNE, Individually and as a member of the Tribe,
19
20 and as Corresponding Secretary of the Tribal Council and of the Management Board
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22 of the AUTHORITY, WILLIAM QUIDGEON JR., Individually and as a member of
23
24 the Tribe and as a member of the Tribal Council and of the Management Board of the
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26 AUTHORITY, SARAH E. HARRIS, Individually, and as a member of the Tribe and
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28 as a member of the Tribal Council and of the Management Board of the
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30 AUTHORITY, MARK BROWN, Individually and as a member of the Tribe and as
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32 a member of the Tribal Council and of the Management Board of the AUTHORITY,
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34 THAYNE HUTCHINS JR., Individually and as a member of the Tribe and as a
35
36 member of the Tribal Council and of the Management Board of the AUTHORITY,
37
38 CHERYL TODD, Individually and as a member of the Tribe and as a member of the
39
40 Tribal Council and of the Management Board of the AUTHORITY, JOE SMITH,

Individually and as a member of the Tribe and as a member of the Tribal Council and

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4 of the Management Board of the AUTHORITY, and each of the foregoing specified
5
6 individuals as Class Representatives of all members of The Tribe and of The Mohegan
7
8 Nation, and on behalf of all others so similarly situated, for Declaratory Relief,
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10 Damages for Civil Remedies for Deceptive and Unfair Trade Practices, Vicarious
11
12 Liability, and Injunctive Relief Staying Arbitration, Revoking All Gaming Licenses
13
14 in Connecticut and Pennsylvania, and Prohibiting Gaming in Brazil, and Other Relief,
15
16 and allege:

17
18 **PARTIES, JURISDICTION, AND VENUE**
19

20 1. This is an action, *inter alia*, for a declaratory judgment pursuant to
21
22 Article V, § 20 (8) of the Florida Constitution - 1968 Revision, and § 86.011, Florida
23
24 Statutes, (2017), *et seq.*, and for damages, injunctive and other relief regarding subject
25
26 matter whose value exceeds Seven Hundred and Fifty Thousand (\$750,000.00) and
27
28 xx/100 Dollars, exclusive of interest, costs and attorneys' fees.

29
30 2. Because this action involves, in part, international commercial arbitration
31
32 under chapter 684, Florida Statutes, and relates to a business venture in Brazil, it is
33
34 required to be filed in the International Commercial Arbitration Subsection of the
35
36 Complex Business Division pursuant to Amended Administrative Order No. 2013-1A.

37
38 3. Plaintiff, Jeffrey D. Rubinstein, is a Florida citizen, and is *sui juris*.

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40 4. Plaintiff, Joe Sharpe, is a Florida citizen, and is *sui juris*.

5. Plaintiff, Guillermo Bakula, is a Bahamian citizen, and is *sui juris*.

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4 6. Plaintiff, Walter Games, L. L. C., is a Delaware Limited Liability
5
6 Company, qualified to do, and doing business in the State of Florida.
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8 7. Defendant, MGBR, LLC, (“LLC”), is a subsidiary of the Defendant,
9
10 Mohegan Tribal Gaming Authority, (the “Authority”), which is an instrumentality of
11
12 the Defendant, Mohegan Tribe of Indians in Connecticut, (the “Tribe”). The LLC, the
13
14 Authority, and the Tribe are hereinafter collectively referred to as the “Mohegans”.
15
16 The Mohegans have waived sovereign immunity, and the class action Defendants are
17
18 subject to personal jurisdiction in Florida pursuant to, among others, I) section
19
20 48.193(1)(a)(7), Florida Statutes, because they breached the Definitive Written
21
22 Agreements, described in more detail *infra* at paragraph 17, by failing to perform acts
23
24 required by those contracts to be performed in Florida, and ii) section 684.0049,
25
26 Florida Statutes, because they entered into the Definitive Written Agreements, copies
27
28 of which are attached to the original Complaint filed in the above styled cause,
29
30 providing for, *inter alia*, waiver of the Mohegan Tribes’ sovereign immunity¹, and
31
32 providing for arbitration in Florida, and thus consented to *in personam* jurisdiction in
33
34 Florida.
35

36 8. The Authority is an instrumentality of the Mohegan Tribe of Indians of
37
38 Connecticut, a federally-recognized Indian tribe with an approximately 595-acre
39
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¹This express waiver of sovereign immunity is located in the Amended and Restated Operating Agreement in Section 13.4, and is found within Section 6.5 of the Subscription Agreement as well.

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4 reservation situated in southeastern Connecticut, adjacent to Uncasville, Connecticut.

5
6 The Authority has been granted the exclusive authority to conduct and regulate

7
8 gaming activities on the existing reservation of the Tribe, including the operation of

9
10 Mohegan Sun, a gaming and entertainment complex located on an approximately

11
12 185-acre site on the Tribe's reservation. Through its subsidiary, Downs Racing, L.P.,

13
14 the Authority also owns and operates Mohegan Sun Pocono, a gaming and

15
16 entertainment facility located on an approximately 400-acre site in Plains Township,

17
18 Pennsylvania, and several off-track wagering facilities located elsewhere in

19
20 Pennsylvania.

21
22 9. The Tribe's gaming operation at Mohegan Sun is currently one of only
23
24 two legally authorized gaming operations in southern New England offering
25
26 traditional slot machines and table games. Mohegan Sun currently operates in an
27
28 approximately 3.1 million square-foot facility, which includes Casino of the Earth,
29
30 Casino of the Sky, Casino of the Wind, 100,000 square feet of retail space, including
31
32 The Shops at Mohegan Sun, a 10,000-seat Mohegan Sun Arena, a 350-seat Cabaret
33
34 Theatre, 100,000 square feet of meeting and convention space, the 1,200-room luxury
35
36 Sky Hotel Tower and the 400-room Earth Hotel Tower. Mohegan Sun Pocono
37
38 operates in an approximately 400,000 square-foot facility, offering traditional slot
39
40 machines and table games, live harness racing and simulcast and off-track wagering,
a 238-room hotel, 20,000 square feet of meeting and convention space, several dining

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4 and retail options and a bus passenger lounge. More information about the Authority
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6 and its properties can be obtained by visiting www.mohegansun.com,
7
8 www.mohegansunpocono.com or www.mtga.com. Federal law, administered by The
9
10 United States Department of the Interior, Bureau Indian Affairs, and Connecticut law
11
12 permits the operation of the large Indian casinos run by, *inter alia*, the Mohegan tribe
13
14 in Connecticut. These tribal casinos in Connecticut are hugely popular. So much so,
15
16 in fact, that neighboring Massachusetts recently legalized the opening of three casinos
17
18 (commercial and/or tribal depending on who wins the bids for the licenses). In
19
20 addition, the Authority has issued publically traded bonds which are registered with
21
22 the United States Securities and Exchange Commission.

23
24 10. The Mohegan Tribe of Indians of Connecticut is permitted to operate
25
26 casinos in the State of Connecticut pursuant to a Tribal-State Compact, regulated by
27
28 the Gaming Division of the State of Connecticut, Division of Consumer Protection,
29
30 and The United States Department of the Interior, Bureau Indian Affairs.

31
32 11. The Mohegan Tribe of Indians of Connecticut is permitted to operate
33
34 casinos in the State of Pennsylvania pursuant to a Tribal-State Compact, regulated by
35
36 The Pennsylvania Gaming Control Board, and The United States Department of the
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38 Interior, Bureau Indian Affairs.

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40 12. Defendant, International Court of Arbitration of the International
Chamber of Commerce (“ICC”) is an institution that provides a forum for the

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4 alternative resolution of international commercial disputes, specifically including in
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6 Miami-Dade County, Florida. The ICC is subject to personal jurisdiction in Florida
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8 under, among others, section 48.193(1)(b)(2), Florida Statutes, because the ICC is
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10 engaged in substantial and not isolated activity in Florida and the exercise of general
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12 personal jurisdiction over it would not offend traditional notions of fair play and
13
14 substantial justice.

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16 13. Venue is proper in this circuit because, among other things, the causes
17
18 of action accrued here.

19
20 14. The Definitive Written Agreements, at paragraph 13.6 of the Amended
21
22 and Restated Operating Agreement, Exhibit A, and provides for the prevailing party
23
24 to recover its reasonable attorneys fees from the non-prevailing party for any violation
25
26 of Section 13.6 thereof, to wit, violation of the covenant not to compete.

27 28 GENERAL ALLEGATIONS

29
30 15. This action arises from a business venture between the Mohegans and
31
32 Walter Games, LLC, a Delaware Limited Liability Company, authorized to, and doing
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34 business in the State of Florida, (“Walter Games”), to develop gaming opportunities
35
36 and a casino in Brazil, through a Joint Venture with a 51% Brazilian partner, Detotto
37
38 & Ingegneri Holding Ltd., d/b/a Mohegan Sun Brasil, (“JV”), which, JV, through its
39
40 planned Título de Capitalização lottery alone, was projected to make a profit of Fifty-
three Million (\$53,000,000.00) and xx/100 Dollars in the first three years of operation,

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4 and Two Hundred Thirty-Three Million (\$233,000,000.00) and xx/100 Dollars in
5
6 EBIDTA for the first twelve months of operations for the Jockey Club.

7
8 16. The business venture was structured with Mohegans, for a Five Million
9
10 (\$5,000,000.00) and xx/100 Dollar purchase price, buying a minority interest in, and
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12 loaning an additional sum of up to Seven Million (\$7,000,000.00) and xx/100 Dollars
13
14 (See Operating Agreement at P 24, ¶3.7a and b) to Walter Games, (the “BUY IN”),
15
16 with Walter Games entering into the JV with the Brazilian partner to develop gaming
17
18 opportunities and casinos in Brazil, with subsequent loans to follow for construction.

19
20 17. At all times material and relevant hereto, the original members of Walter
21
22 Games were i) Bart Entertainment, Ltd., a company organized and existing under the
23
24 laws of the Bahamas, ii) Jeffrey Rubinstein Holdings, Inc., a company organized and
25
26 existing under the laws of the State of Florida, and iii) Joe Sharpe Holdings, Inc., a
27
28 company organized and existing under the laws of the State of Florida, (hereinafter
29
30 collectively referred to as the “Companies”). At all times, Plaintiffs, JEFFREY D.
31
32 RUBINSTEIN, JOE SHARPE, and GUILLERMO BAKULA, were shareholders
33
34 and/or officers and directors of the respective companies which were parties to the
35
36 Definitive Written Agreements, but the individuals never signed any of the Definitive
37
38 Written Agreements, described below in Paragraph 18, in their individual capacity.

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40 18. To memorialize the BUY IN, on or about June 24, 2016, Mohegan and
Walter Games entered into several agreements (the “Definitive Written Agreements”):

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4 a) the Amended and Restated Operating Agreement of Walter Games, LLC
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6 (“Operating Agreement”), and b) the Subscription Agreement (“Subscription
7
8 Agreement”) and c) Confidential Project Development Term Sheet (“Term Sheet”)
9
10 between the Mohegans and Walter Games, LLC and its corporate members, true and
11
12 correct copies of which are attached to the original Complaint filed in the above styled
13
14 cause, as **Exhibits A and B and C**, respectively, and which are hereby incorporated
15
16 herein by reference.

17
18 19. Significantly, the Plaintiffs in this action were *not* individually parties to
19
20 the Definitive Written Agreements, which were only signed and entered into by the
21
22 Companies, and the individual Plaintiffs did not sign any of the Definitive Written
23
24 Agreements in their individual capacities.

25
26 20. The individual Plaintiffs signed the Definitive Written Agreements only
27
28 in a representative capacity as authorized officers and/or directors on behalf of the
29
30 Companies which are the corporate members of Walter Games, and who were the only
31
32 parties to the Definitive Written Agreements.

33
34 21. At all times material and relevant hereto, the Companies, and not the
35
36 individuals, were the members of Walter Games, and only the Companies were ever
37
38 parties to the Definitive Written Agreements. Thus, Bill Bakula signed only as
39
40 Director on behalf of Bart Entertainment, Ltd., and not individually; Jeffrey
Rubinstein signed only as President on behalf of Jeffrey Rubinstein Holdings, Inc.,

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4 and not individually; and Joe Sharpe signed only as President on behalf of Joe Sharpe
5
6 Holdings, Inc., and not individually.

7
8 22. The Definitive Written Agreements provide for ICC arbitration in Miami,
9
10 Florida among the “parties” (to wit, only the Companies who were the corporate
11
12 members of Walter Games, the Mohegans, and Walter Games, LLC in the event of a
13
14 dispute “arising out of or relating to” to the Definitive Written Agreements. *See*
15
16 Operating Agreement, Ex. A, at § 12.4²; Subscription Agreement, Ex. B, at § 5.4.³

17
18 23. The Subscription Agreement is governed by New York law. *See* Ex. B.
19
20 at § 6.4. Although the Operating Agreement was originally governed by Delaware
21
22 law (*see* Ex. A, at § 13.3), the parties subsequently elected to have the Operating
23
24 Agreement governed by Florida law during a vote taken during the March 1, 2017
25
26 special combined meeting of managers, directors, and members of Walter Games, in
27
28 which Mohegans participated and voted. *See* March 1, 2017 Minutes, a true and
29
30 correct copy of which is attached to the original Complaint filed in the above styled
31
32 cause, as **Exhibit D**, at p. 23, which Exhibit is incorporated herein by reference.

33
34 24. On or about July 5, 2017, Mohegans commenced an arbitration
35
36

37
38 ² Section 12.4 provides: “If the *parties* cannot resolve any Dispute for any reason ... such Disputes shall be finally settled
39 under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance
40 with said Rules” (emphasis added).

³ Section 5.4 provides: “If the *parties* cannot resolve a Dispute for any reason ... such Dispute shall be finally settled under
the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with
said Rules” (emphasis added).

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4 proceeding before the ICC against not only Walter Games and the Companies as its
5
6 corporate members, but also purportedly against the Plaintiffs in their individual
7
8 capacities, where it was assigned case No. 22934/MK (hereinafter, the "Arbitration").
9

10 A true and correct copy of the Request for Arbitration is attached to the original
11
12 Complaint filed in the above styled cause, as Exhibit D, and is hereby incorporated
13
14 herein by reference.

15
16 25. Based on well-established legal principles under Florida law⁴, the
17
18 individual Plaintiffs, *supra*, cannot be compelled to arbitrate before the ICC because
19
20 they did not sign the Agreements containing the arbitration clauses in their individual
21
22 capacities.
23

24 26. Plaintiffs have retained undersigned counsel to represent them in this
25
26 action and have agreed to pay them a reasonable fee for their services.
27

28 27. All conditions precedent to filing the causes of action alleged in this
29
30 Amended Complaint have occurred, or have been performed, or have been waived or
31

32
33
34 ⁴ See, e.g., *Wasserman v. Triad Sec. Corp.*, No. 8:05-CV-1898-T-24, 2006 WL 1644029, at *2 (M.D. Fla. June 12, 2006) ("[I]t is
35 settled beyond peradventure that a person signing a contract only in a corporate capacity, and unambiguously indicating that
36 fact on the face of the contract documents, does not thereby become a party to the agreement' the Court finds that it
37 is clear that Triad knew that it was dealing with the Phillip Roy Fund as an entity and not with Phillip Wasserman as an
38 individual. Accordingly, the Court finds that Wasserman, in his individual capacity, never entered into an agreement to
39 arbitrate the dispute that is the subject matter of the arbitration proceeding initiated by Triad and cannot, therefore, be
40 compelled to participate in the arbitration in his individual capacity.") (citation omitted); *Rolls-Royce PLC v. Royal Caribbean
Cruises LTD.*, 960 So. 2d 768, 770 (Fla. 3d 2007) ("Because arbitration is a matter of contract, 'a party cannot be required to
submit to arbitration any dispute which he has not agreed so to submit.'") (citation omitted); *Johnson v. Pines*, 968 So. 2d 700,
702 (Fla. 4th DCA 2007) ("[A] person who signs a contract only in a corporate capacity is not bound as an agent. ... It is thus
apparent that, although Johnson, a non-party to the agreement, could have enforced the arbitration provision against the
parties who agreed to arbitrate these claims, the parties who agreed to arbitrate cannot force arbitration on Johnson, since
he did not agree to arbitrate. We accordingly reverse.").

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4 excused.
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6 **CLASS REPRESENTATION ALLEGATIONS**
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8 28. The class of Class Action Defendants which exists under Rule 1.220 (b),
9
10 Florida Rules of Civil Procedure, as revised, who together with the Defendants are
11
12 jointly and severally liable to Plaintiffs consists of all past, present, and future
13
14 individual members of The Mohegan Tribe of Indians of Connecticut, a federally
15
16 recognized Indian Tribe, ("The Tribe"), (which waived sovereign immunity in the
17
18 Definitive Written Agreements), believed to be in excess of Four Hundred (400)
19
20 members, who are jointly and severally vicariously liable as principals for the acts and
21
22 omissions of their agents, DANIEL INGEGNERI, BEN O'NEIL, QUINN EMANUEL
23
24 URQUHART & SULLIVAN LLP, ROBERT RUBENSTEIN, and MARIO C.
25
26 KONTOMERKOS, to wit: MGBR, LLC, THE MOHEGAN TRIBAL GAMING
27
28 AUTHORITY, d/b/a Mohegan Gaming & Entertainment, an instrumentality of the
29
30 Mohegan Tribe Indians of Connecticut, (the "Authority"), and its nine-member
31
32 Management Board ("Management Board"), whose members also comprise the Tribal
33
34 Council ("Tribal Council") for Declaratory Relief, Damages for Deceptive and Unfair
35
36 Trade Practices, Vicarious Liability, and Injunctive Relief Staying Arbitration,
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38 Revoking All Gaming Licenses in Connecticut and Pennsylvania, and elsewhere, and
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40 Prohibiting Gaming in Brazil, and Other Relief, and allege:

29. a) The claims against the Class Action Defendants as the representatives

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4 of all the members of a class, should be permitted to be maintained as a class action
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6 because: (1) the members of the class are so numerous that separate joinder of each
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8 member is impracticable, (2) the claim or defense of the representative party raises
9
10 questions of law or fact common to the questions of law or fact raised by the claim or
11
12 defense of each member of the class, (3) the claim or defense of the representative
13
14 party is typical of the claim or defense of each member of the class, and (4) the
15
16 representative parties can fairly and adequately protect and represent the interests of
17
18 each member of the class.

19
20 b) The claims against the Class Action Defendants, and their defenses
21
22 should be permitted to be maintained on behalf of the class because the prerequisites
23
24 of subdivision (a) are satisfied, and that:

25
26 (1) the prosecution of separate claims against or defenses by individual
27
28 members of the class would create a risk of either:

29
30 (A) inconsistent or varying adjudications concerning
31
32 individual members of the class which would establish incompatible standards of
33
34 conduct for the party opposing the class; or

35
36 (B) adjudications concerning individual members of the class
37
38 which would, as a practical matter, be dispositive of the interests of other members
39
40 of the class who are not parties to the adjudications, or substantially impair or impede
the ability of other members of the class who are not parties to the adjudications to

1
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3
4 protect their interests; or
5

6 (2) the party opposing the class has acted or refused to act on grounds
7
8 generally applicable to all the members of the class, thereby making final injunctive
9
10 relief or declaratory relief concerning the class as a whole appropriate; or
11

12 (3) In the unlikely event the Court concludes that the claims or defenses
13
14 are not maintainable under either subdivision (b)(1) or (b)(2), *supra*, but the questions
15
16 of law or fact common to the claim or defense of the representative party and the
17
18 claim or defense of each member of the class predominate over any question of law
19
20 or fact affecting only individual members of the class, and class representation is
21
22 superior to other available methods for the fair and efficient adjudication of the
23
24 controversy, then the Court should conclude that class certification is appropriate from
25
26 consideration of all relevant facts and circumstances, including (A) the respective
27
28 interests of each member of the class in individually controlling the prosecution of
29
30 separate claims or defenses, (B) the nature and extent of any pending litigation to
31
32 which any member of the class is a party and in which any question of law or fact
33
34 controverted in the subject action is to be adjudicated, © the desirability or
35
36 undesirability of concentrating the litigation in the forum where the subject action is
37
38 instituted, and (D) the difficulties likely to be encountered in the management of the
39
40 claim or defense on behalf of a class.

29. The Mohegans, through the Authority, it's Management Board and the

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4 Tribal Council, together with their attorneys and agents, DANIEL INGEGNERI, BEN
5
6 O'NEIL, QUINN EMANUEL URQUHART & SULLIVAN LLP, ROBERT
7
8 RUBENSTEIN, and MARIO C. KONTOMERKOS, suborned to commit perjury, as
9
10 alleged, *infra*, and thereby violated numerous Florida laws in Florida, by demanding
11
12 arbitration in Florida based upon perjured testimony, including, and not necessarily
13
14 limited to Florida Statutes, Chapter 501, Part II, the Florida Deceptive and Unfair
15
16 Trade Practices Act.

17
18 30. The members of the class (the individual members of the Tribe), as
19
20 principals, are jointly and severally liable for the acts of their agents, DANIEL
21
22 INGEGNERI, BEN O'NEIL, QUINN EMANUEL URQUHART & SULLIVAN LLP,
23
24 ROBERT RUBENSTEIN, and MARIO C. KONTOMERKOS, and are so numerous
25
26 that the joinder of all members is impracticable.

27
28 31. There are common questions of law and fact, because the perjury and
29
30 conspiracy to commit perjury by DANIEL INGEGNERI, BEN O'NEIL, QUINN
31
32 EMANUEL URQUHART & SULLIVAN LLP, ROBERT RUBENSTEIN, and
33
34 MARIO C. KONTOMERKOS, the agents of the Mohegans, make all the members of
35
36 the Tribe, as principals, vicariously jointly and severally liable for the damages caused
37
38 by DANIEL INGEGNERI, BEN O'NEIL, QUINN EMANUEL URQUHART &
39
40 SULLIVAN LLP, ROBERT RUBENSTEIN, and MARIO C. KONTOMERKOS,
their agents, especially since the Mohegans waived sovereign immunity in the

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3
4 Definitive Written Agreements, Exhibits A and B copies of which are attached to the
5
6 original Complaint filed in the above styled cause.

7
8 32. There are common questions of law and fact, because the perjury
9
10 suborned and conspiracy to commit perjury by DANIEL INGEGNERI, BEN O'NEIL,
11
12 QUINN EMANUEL URQUHART & SULLIVAN LLP, ROBERT RUBENSTEIN,
13
14 and MARIO C. KONTOMERKOS, the agents of the Mohegans, make all the
15
16 members of the Tribe, as principals, vicariously jointly and severally liable for the
17
18 damages caused by their agents DANIEL INGEGNERI, BEN O'NEIL, QUINN
19
20 EMANUEL URQUHART & SULLIVAN LLP, ROBERT RUBENSTEIN, and
21
22 MARIO C. KONTOMERKOS.

23
24 33. The defenses of the individual members of the class action Defendants
25
26 are typical of the defenses of the class because each member of the tribe is jointly and
27
28 severally vicariously liable as principals for the acts of their agents., DANIEL
29
30 INGEGNERI, BEN O'NEIL, QUINN EMANUEL URQUHART & SULLIVAN LLP,
31
32 ROBERT RUBENSTEIN, and MARIO C. KONTOMERKOS. There is no conflict
33
34 between named Defendants and any individual class members. Defendants will be
35
36 represented by experienced and qualified attorneys, and who will fairly and
37
38 adequately represent the class.

39
40 34. The common questions of law and fact predominate over any questions
affecting only individual members of the class.

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4 35. A class action is superior to other methods for the adjudication of the
5
6 controversy, because

- 7
8 A. (1) the members of the class are so numerous that separate joinder of
9
10 each member is impracticable,
11
12 (2) the claim or defense of the representative party raises questions of
13
14 law or fact common to the questions of law or fact raised by the claim or
15
16 defense of each member of the class,
17
18 (3) the claim or defense of the representative party is typical of the
19
20 claim or defense of each member of the class, and
21
22 (4) the representative party can fairly and adequately protect and
23
24 represent the interests of each member of the class; and

- 25
26 B. (1) the prosecution of separate claims or defenses by or against
27
28 individual members of the class would create a risk of either:
29
30 (2) inconsistent or varying adjudications concerning individual
31
32 members of the class which would establish incompatible standards of
33
34 conduct for the party opposing the class; or

35
36 C. adjudications concerning individual members of the class which would,
37
38 as a practical matter, be dispositive of the interests of other members of the class who
39
40 are not parties to the adjudications, or substantially impair or impede the ability of
other members of the class who are not parties to the adjudications to protect their

interests; or

D. the party opposing the class has acted or refused to act on grounds generally applicable to all the members of the class, thereby making final injunctive relief or declaratory relief concerning the class as a whole appropriate; or

E. the claim or defense is not maintainable under either subdivision (b)(1) or (b)(2) of the Rule, but the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy.

F. the particular facts and circumstances that show the claim or defense advanced by the representative party is typical of the claim or defense of each member of the class;

G. the approximate number of class members is estimated at 400, but the exact number is unknown at this time, but that number will be ascertained by appropriate discovery.

COMMON QUESTIONS OF LAW OR FACT

36. Pursuant to the Definitive Written Agreements, the Mohegans agreed to pay Walter Games, LLC an additional sum of \$3,000,000.00 towards the Buy-In, plus initial loans up to an additional \$7,000,000.00, plus additional funds for construction

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2
3
4 of a casino.

5
6 37. The Mohegans wrongfully failed and refused to pay the money they
7
8 agreed to pay Walter Games, LLC pursuant to the Definite Written Agreements, after
9
10 making repeated representations for months that the next tranche of funds called for
11
12 as part of the BUY IN would be transferred upon receipt of certain financial data,
13
14 which was given, but no further funds were paid to Walter Games LLC.

15
16 38. The Prevaricator, Daniel Ingeneri, who had been working for Walter
17
18 Games, submitted invoices for alleged services rendered, and costs advanced.

19
20 39. The invoices were partially paid, and then questioned and objected to as
21
22 false and fraudulent.

23
24 40. The Prevaricator, Daniel Ingeneri, demanded payment of the monies
25
26 claimed in the false and fraudulent invoices through a Brazilian law firm, SMEKA-
27
28 BSI Claims Group via attorney Felipe Acciaris.

29
30 41. When Walter Games failed and refused to pay the Prevaricator, Daniel
31
32 Ingeneri, false and fraudulent invoices, he threatened suit. Walter Games tried to
33
34 discern the accuracy of the claimed invoice amounts due and tried to amicably resolve
35
36 the claim, but would NOT pay them immediately in full, so dissatisfied with the
37
38 timing and potential amount of repayment, Daniel Ingegneri turned to the Mohegans.

39
40 42. Instead of filing suit, the Prevaricator, Daniel Ingeneri, went to the
Mohegans, and told them lies, and they induced him to lie and suborn perjury in an

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3
4 affidavit which they prepared and conspired with him to prepare and submit in support
5
6 to the Arbitration they filed before the ICC. Defendants, the Mohegans, by and
7
8 through their authorized agents, DANIEL INGEGERI, BEN O'NEIL, QUINN
9
10 EMANUEL URQUHART & SULLIVAN LLP, ROBERT RUBENSTEIN, and
11
12 MARIO C. KONTOMERKOS, who were acting within the scope of their authority,
13
14 knowingly used the false affidavit and concealed evidence to poison the rest of the
15
16 tribe against Walter Games

17
18 43. The Prevaricator, Daniel Ingegneri, upon information and belief directly
19
20 and indirectly, demanded, sought, received, accepted, and agreed to receive and accept
21
22 things of value, personally and for any other person, from the Tribe, et al., in return
23
24 for Daniel Ingegneri being induced to do acts and omit to do acts in violation of
25
26 Florida law, specifically including, but not necessarily limited to violating Florida
27
28 Statutes, Chapter 501. The Mohegans, and their counsel, Ben O'Neil and QUINN
29
30 EMANUEL URQUHART & SULLIVAN LLP, wrongfully filed the perjury filled
31
32 Affidavit before the ICC as an Exhibit to their demand for arbitration.
33

34 **COUNT I - DECLARATORY ACTION**

35
36 44. Paragraphs 1 through 43 above hereby are re-alleged and incorporated
37
38 by reference as through fully set forth herein.

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40 45. This is an action for declaratory relief brought pursuant to Article V, §
20 (8) (3), of the Florida Constitution - 1968 Revision, and § 86.011, Florida Statutes,

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3
4 (2017), *et seq.* to determine that Plaintiffs are not proper parties to the Arbitration.
5

6 46. There is a present, actual and bona-fide dispute regarding the parties'
7
8 respective rights and obligations as to whether the individual Plaintiffs are subject to
9
10 the jurisdiction of the ICC for purposes of the Arbitration.
11

12 47. This action involves a present, ascertained or ascertainable set of facts
13
14 or present controversy as to a state of facts and some statutory or contractual
15
16 immunity, power, privilege, or right of the parties remains dependent upon the facts
17
18 or the law applicable to the facts.
19

20 48. All parties having an actual, present, adverse, and antagonistic interest
21
22 in the subject matter hereof are properly joined in this action.
23

24 49. The relief requested herein is not pursued out of curiosity or for any
25
26 theoretical reason.
27

28 50. Plaintiffs will be irreparably damaged unless the rights of the parties are
29
30 determined before the Arbitration is allowed to proceed.
31

32 51. Accordingly, Plaintiffs request a speedy hearing of this action in
33
34 accordance with section 86.111, Florida Statutes and that this Court advance the
35
36 matter on its calendar.
37

38 **COUNT II -- INJUNCTION AS TO ARBITRATION**
39

40 52. Paragraphs 1 through 43 above hereby are re-alleged and incorporated
by reference as through fully set forth herein.

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4 53. As supplemental relief to its declaratory judgment action, the individual
5
6 Plaintiffs seek to enjoin the Defendants from proceeding with the Arbitration against
7
8 the Plaintiffs.
9

10 54. Section 684.0028, Florida Statutes, authorizes this Court to award an
11
12 interim measure of protection, such as injunctive relief, before or during an arbitral
13
14 proceeding.
15

16 55. The individual Plaintiffs have a clear legal right to an injunction because
17
18 they do not have an adequate remedy at law.
19

20 56. The Individual Plaintiffs will suffer irreparable harm if the injunction is
21
22 not entered because, among other things, they will be deprived of their constitutional
23
24 right to a trial by jury.
25

26 57. The individual Plaintiffs are substantially likely to succeed on the merits
27
28 of this action because they were not signatories to the Agreement in their individual
29
30 capacity.
31

32 58. An injunction will serve the public purpose of limiting alternative dispute
33
34 resolution to parties who have voluntarily agreed to arbitrate, unlike the individual
35
36 Plaintiffs in this action.
37

38 **PRAYER FOR RELIEF**

39
40 WHEREFORE, Plaintiffs pray that this Court enter Judgement as follows:

- i. Declaring that the individual Plaintiffs are not proper parties to the

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4 Arbitration because they did not sign the Agreements in their
5
6 individual capacities;

- 7
8 ii. Enjoining Mohegan and the ICC from proceeding with the
9
10 Arbitration against the Plaintiffs;
11
12 iii. Awarding Plaintiffs their reasonable attorneys' fees;
13
14 iv. Awarding Plaintiffs their costs of suit; and
15
16 v. Awarding such further relief as this Court may deem just and
17
18 proper.
19

20 **COUNT III - DAMAGES AND INJUNCTIVE RELIEF PURSUANT TO**
21 **FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**
22

23 59. Paragraphs 1 through 43 above hereby are re-alleged and incorporated
24
25 by reference as through fully set forth herein.
26

27 60. This is an action for damages in excess of Seven Hundred Fifty Thousand
28
29 (\$750,000.00) and xx/100 Dollars, excluding interest, costs and attorneys fees, plus
30
31 injunctive relief, and costs and attorney's fees pursuant to Florida's Deceptive and
32
33 Unfair Trade Practices Act for the above described acts perpetrated by Defendants, the
34
35 Mohegans, by and through their authorized agents, DANIEL INGEGNERI, BEN
36
37 O'NEIL, QUINN EMANUEL URQUHART & SULLIVAN LLP, ROBERT
38
39 RUBENSTEIN, and MARIO C. KONTOMERKOS, who were acting within the scope
40
of their authority, all in violation of Florida Statutes, Chapter 501, Part II.

61. Plaintiffs bring this cause of action individually and against the

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3
4 individual Defendants as well as the Class Defendants on behalf of the Class.
5

6 62. The above described acts of the class action Defendants, by and through
7
8 their authorized agents, constitute violations of Florida Statutes Chapter 501.
9

10 63. Defendants have violated the Florida Deceptive and Unfair Trade
11
12 Practices Act, § 501 et seq., by engaging in unfair, unlawful, and fraudulent business
13
14 acts or practices as described above in this Amended Complaint, including but not
15
16 limited to, committing perjury and disseminating or causing to be disseminated in the
17
18 State of Florida, unfair, deceptive, untrue and or misleading statements as set forth
19
20 above in this Amended Complaint, violations of Florida Statutes Chapter 517, breach
21
22 of Section 13.6 of the Amended Restated Operating Agreement, and breach of their
23
24 fiduciary duties to Plaintiffs, and breach of their duties to Plaintiffs of good faith and
25
26 fair dealing in regards to the Definitive Written Agreements.
27

28 64. Defendant above described acts constitute unfair methods of competition,
29
30 or unconscionable, deceptive, or unfair acts or practices, unfair methods of
31
32 competition, unconscionable acts or practices, and unfair or deceptive acts or practices
33
34 in the conduct of a trade or commerce which are unlawful under the laws of the state
35
36 of Florida.
37

38 65. Plaintiffs suffered injury in fact as a result of Defendants deceptive
39
40 and/or unfair methods of competition. As a proximate result of Defendants conduct,

Plaintiffs were exposed to these misrepresentations and omissions, were and continue

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2
3
4 to suffer damages and have incurred and continue to incur costs and attorneys fees,
5
6 and suffered monetary losses as a result.

7
8 66. Plaintiffs demand Final Judgments be entered against the Defendants and
9
10 all members of the class declaring their actions violate Chapter 501 Florida statutes,
11
12 awarding damages, restitution, disgorgement, injunctive relief enjoining Defendants
13
14 for continuing to violate Chapter 501, revoking their gaming licenses prohibiting them
15
16 from engaging in the gaming business in Connecticut, Pennsylvania, or any where else
17
18 in the United States of America, and all other relief allowed under Florida Statutes,
19
20 Chapter 501, plus interest, attorneys’ fees (as authorized by F. S. §501.2105 and costs.

21
22 **PRAYER FOR RELIEF**

23
24 WHEREFORE, Plaintiffs pray that this Court enter Judgement as follows:

- 25
26 i. Declaring that the Defendants violated Florida Statutes Chapter
27
28 501 by engaging in fraudulent, deceptive, and/or unfair trade
29
30 practices;
31
32 ii. Awarding Plaintiffs their damages arising from said violations of
33
34 Florida Statute Chapter 501;
35
36 iii. Awarding Plaintiffs their reasonable attorneys’ fees;
37
38 iv. Awarding Plaintiffs their costs of suit; and
39
40 v. Awarding injunctive relief as pled, supra, enjoining the Mohegans
from engaging in any gaming business in Connecticut and

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3
4 Pennsylvania, and elsewhere in the United States; and
5
6 vi. Awarding such further relief as this Court may deem just and
7
8 proper.
9

10 **COUNT IV**
11 **TORTIOUS INTERFERENCE**
12

13 67. Paragraphs 1 through 43 above hereby are re-alleged and incorporated
14
15 by reference as through fully set forth herein.
16

17 68. The Plaintiffs, JEFFREY D. RUBINSTEIN, JOE SHARPE, and
18
19 GUILLERMO BAKULA, and WALTER GAMES, LLC, a Delaware Limited
20
21 Liability Company qualified to do, and doing business in the State of Florida, sue the
22
23 Class Action Defendants for damages resulting from their tortious interference with
24
25 their advantageous business relationships.
26

27 69. The Plaintiffs had an existing business relationship with “Detotto &
28
29 Ingegneri Holding, LTDA”; the Defendants’ had knowledge of the relationship; by
30
31 their above described acts the defendant's intentionally and unjustifiedly interfered
32
33 with that relationship; and Plaintiffs suffered damages as a result of the breach of the
34
35 relationship.
36

37 70. Plaintiffs bring this cause of action individually and against the
38
39 individual Defendants as well as the Class Defendants on behalf of the Class.
40

71. The elements of a cause of action based on tortious interference with a
business relationship are (1) the existence of a business relationship, (2) the

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3
4 defendant's knowledge of the relationship, (3) the defendant's intentional and
5
6 unjustified interference with the relationship and (4) damage to the plaintiff as a result
7
8 of the breach of the relationship.

9
10 72. Plaintiffs had an existing business relationship with the Brazilian JV
11
12 partner, and Defendants had knowledge of this relationship. The Defendants
13
14 intentional and unjustified interference with this relationship by breaching the
15
16 Definitive Written Agreements and conspiring with the Prevaricator, Daniel Ingeneri,
17
18 to suborn perjury and attempt to perpetrate a fraud on the Arbitration panel by using
19
20 perjury to attempt to collect a fraudulent debt, causing Plaintiffs tens if not hundreds
21
22 of millions of dollars in damages, costs and attorneys fees.

23
24 73. No legitimate interests were advanced by the Defendants' interference.
25

26 **PRAYER FOR RELIEF**

27
28 WHEREFORE, Plaintiffs pray that this Court enter Judgement as follows:
29

- 30 1. Enjoining Mohegan from competing against Plaintiffs in the
31
32 gaming business in Brazil;
33
34 2. Awarding Plaintiffs their damages and attorneys fees;
35
36 3. Awarding Plaintiffs their costs of suit; and
37
38 4. Awarding such further relief as this Court may deem just and
39
40 proper.

COUNT V
BREACH OF CONTRACT

74. Paragraphs 1 through 43 above hereby are re-alleged and incorporated by reference as through fully set forth herein.

75. The Plaintiffs, JEFFREY D. RUBINSTEIN, JOE SHARPE, and GUILLERMO BAKULA, and WALTER GAMES, LLC, a Delaware Limited Liability Company qualified to do, and doing business in the State of Florida, sue the Class Action Defendants for damages resulting from their breach of contract, to wit, the Amended and Restated Operating Agreement, Exhibit A.

76. The elements for a breach of contract are (1) a valid written agreement, (2) a material breach, and (3) damages. *See Friedman v. New York Lie Ins. Co.*, 985 So.2d 56, 58 (Fla. 4DCA 2008).

77. The Amended and Restated Operating Agreement is a valid written agreement entered into between Plaintiff Walter Games, LLC and the Defendant MGBR, LLC.

78. The Defendants did materially breach the covenant not to compete contained in Section 13.6 of the Amended and Restated Operating Agreement, by pursuing investment opportunities in Brazil which would have been in competition with Walter games, LLC, in direct violation of Section 13.6 of the Amended and Restated Operating Agreement, and withheld funding of the second tranche of the BUY IN as they pursued those interest competitive with those of Walter Games, LLC.

79. The Plaintiffs as a result of the material breach have suffered damages

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter Judgement as follows:

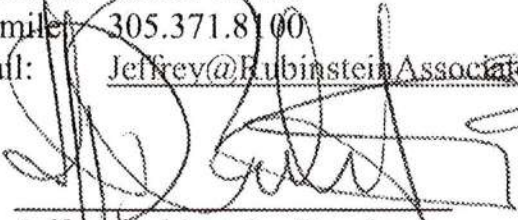
- 1. Entry of an Order finding the Defendants in breach of Section 13.6 of the Amended and Restated Operating Agreement;
- 2. Awarding Plaintiffs their damages and attorneys fees;
- 3. Awarding Plaintiffs their costs of suit; and
- 4. Awarding such further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

The Plaintiffs hereby demand trial by jury as to all issues so triable as a matter of right.

Respectfully Submitted,

RUBINSTEIN & ASSOCIATES, P.A.
 Co-Counsel for Plaintiffs
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By: 
 Jeffrey Rubinstein, Esquire
 Fla. Bar No. 183761

CERTIFICATE OF SERVICE


I **HEREBY CERTIFY** that a true and correct copy of the above and foregoing was furnished by Florida E-Portal filing this 1st day of ~~January~~ ^{February}, 2018:

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Y:\DA\E\Shared\Cases\Hakubi\Walter Games LLC\Mohigans\Libe & Delamation Suit\Amended Complaint Ver 14 Jan312018.wpd