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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

THE TULALIP TRIBES OF WASHINGTON

Plaintiff,

v.

STATE OF WASHINGTON; WASHINGTON
STATE GAMBLING COMMISSION;
CHRISTINE GREGOIRE, Governor of
Washington, in her official capacity; and RICK
DAY, Director of the Washington State Gambling
Commission, in his official capacity.

Defendants

Case No.: _____

**PLAINTIFF’S COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

INTRODUCTION AND NATURE OF DISPUTE

1. This is a dispute between the Tulalip Tribes of Washington (“Tulalip” or “Tribe”), a federally recognized Indian tribe, and the State of Washington regarding enforcement of the terms of a Class III Tribal-State Gaming Compact. The Tribe seeks a declaration that the State is in breach of the Compact and an injunction requiring the State to comply with the Compact.

2. As explained below, the Compact contains a “Most-Favored-Tribe” (“MFT”) guarantee.

1 Under that guarantee, if the State agrees to compact provisions with another tribe regarding
2 the means by which that tribe may acquire the rights to operate player terminals for its tribal
3 lottery system, and if those provisions are “on terms which are more favorable” than those in
4 the Tulalip Compact, then “the [Tulalip] Tribe shall be entitled to such . . . more favorable
5 terms.”
6

7 3. The State has agreed to compact provisions with another tribe regarding the means by which
8 that tribe may acquire the rights to operate player terminals for its tribal lottery system.

9 Those provisions are on terms that are more favorable than the terms in the Tulalip Compact
10 under which Tulalip may acquire such rights for its own tribal lottery system.
11

12 4. Tulalip has notified the State of its entitlement to amend the Compact to reflect those more
13 favorable terms pursuant to the MFT guarantee. The State has disavowed the applicability of
14 the MFT guarantee and has refused to agree to amend the Tulalip Compact to include the
15 more favorable compact terms to which the State agreed with the other tribe, despite the
16 State’s express promise that Tulalip “shall be entitled” to such more favorable terms.
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19 **JURISDICTION AND VENUE**

20 5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1362.

21 6. The allegations of the Complaint give rise to an actual controversy within the meaning of 28
22 U.S.C. § 2201.
23

24 7. The State has waived its sovereign immunity to this suit by Washington Revised Code §
25 9.46.36001 and by Section 12 of The Tribal-State Compact for Class III Gaming between the
26 Tulalip Tribes of Washington and the State of Washington.

1 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of
2 the actions or omissions giving rise to the claims occurred in this District.

3
4 **PLAINTIFF**

5 9. Plaintiff Tulalip Tribes of Washington is a federally recognized Indian tribe organized
6 pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. § 476. The Tribe enjoys a
7 government-to-government relationship with the United States and exercises sovereign
8 powers of self-governance and jurisdiction over the Tulalip Reservation in the State of
9 Washington.

10 **DEFENDANTS**

11 10. Defendant State of Washington is a sovereign state of the United States.

12
13 11. Defendant Christine Gregoire is the Governor of the State of Washington and is empowered
14 by statute to execute class III gaming compacts between federally recognized Indian tribes
15 and the State of Washington. The Governor is sued in her official capacity.

16
17 12. Defendant Washington State Gambling Commission is an agency of the State of Washington
18 and is empowered by statute to enforce the provisions of any tribal-state gaming compact
19 between a federally recognized Indian tribe and the State of Washington.

20
21 13. Defendant Rick Day is the Director of the Washington State Gambling Commission and is
22 empowered by statute to negotiate the provisions of any tribal-state gaming compact
23 between a federally recognized Indian tribe and the State of Washington. The Director is
24 sued in his official capacity.

25 14. Defendants are referred to collectively hereafter as the “State.”
26

FACTUAL BACKGROUND

The Tulalip Compact and the Tribal Lottery System

- 1
- 2
- 3 15. On August 2, 1991, the Tribe and State executed The Tribal-State Compact for Class III
- 4 Gaming between the Tulalip Tribes of Washington and the State of Washington
- 5 (“Compact”), pursuant to the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. § 2701 *et*
- 6 *seq.*
- 7
- 8 16. The Tribe began offering class III gaming under the Compact in June of 1992.
- 9
- 10 17. Since the inception of the Compact, the Tribe and State have executed eight amendments to
- 11 the Compact. In November 1998, the Tribe and State executed the fourth amendment to the
- 12 Compact authorizing the Tribe to operate a Tribal Lottery System as part of its Class III
- 13 gaming offerings. The amendment included an appendix (“Appendix X”) describing the
- 14 Tribal Lottery System and setting forth the rules and other provisions governing its operation.
- 15
- 16 18. Appendix X was collectively negotiated between twelve federally recognized Indian tribes
- 17 and the State. Additional tribes have subsequently adopted Appendix X and operate Lottery
- 18 Systems pursuant to its provisions.
- 19
- 20 19. In 2007, the Tribe and State executed the seventh amendment to the Compact, adding an
- 21 additional appendix (“Appendix X2”) as a supplement to the Tribal Lottery System
- 22 provisions of Appendix X. Appendix X2 was also collectively negotiated between the State
- 23 and other federally recognized tribes.
- 24
- 25 20. The Tulalip Tribal Lottery System authorized by Appendices X and X2 operates within the
- 26 Tribe’s two casino gaming facilities and utilizes stand-alone electronic Player Terminals with
- video displays that allow players to purchase chances to play electronic scratch ticket and on-

1 line lottery games, and to obtain game result information. The Tribe began operation of its
2 Tribal Lottery System in July of 1999.

3 21. Since its inception, the Tribe's Lottery System has been vital to the Tribe's self-government,
4 and its ability to generate economic benefits for its members, surrounding communities and
5 the State of Washington.

6 **Player Terminal Allocation under the Compact and the TAP Procedure**

7 22. Section 12 of Appendix X and Section 12 of Appendix X2 govern the Tribe's allocation of
8 Player Terminals for its Lottery System. Under these provisions, the Tribe is currently
9 authorized to operate a base allocation of 975 Player Terminals. The Tribe may increase that
10 allocation, up to a maximum of 4,000 terminals between its two facilities, by purchasing
11 allocation rights from any Washington tribe that has entered into a compact authorizing the
12 operation of a Tribal Lottery System ("Eligible Tribe").

13
14 23. Section 12 of Appendix X and Section 12 of Appendix X2 require that the Tribe obtain such
15 additional allocation rights from other Eligible Tribes pursuant to a terminal allocation plan
16 ("TAP"), setting forth the uniform requirements and limitations by which Eligible Tribes
17 may enter agreements to transfer terminal allocation rights. This procedure is hereafter
18 referred to as the "TAP Procedure."

19
20 24. Under the TAP Procedure, Eligible Tribes that do not operate a Tribal Lottery System, or
21 Eligible Tribes that do so utilizing less than their base allocation of terminals, may sell their
22 unused allocation rights to a tribe such as Tulalip that wishes to operate a number of
23 terminals in excess of its base allocation. The price for obtaining such rights is negotiated
24 directly between the two tribes involved in the transaction.
25
26

25. The present dispute between the State and Tribe concerns whether the Tribe is entitled to utilize a mechanism, in addition to the TAP Procedure, by which it may obtain the rights to operate additional Player Terminals for its Tribal Lottery System.

The Compact's Most-Favored-Tribe Guarantee

26. Sections 12.5 of Appendix X and 12.4 of Appendix X2 both include a Most-Favored-Tribe ("MFT") guarantee. Under that provision, the State promised as follows:

[I]n the event that the State agrees (or is required by law or a court ruling to agree) to permit an allocation of Player Terminals to a tribe which is greater, or is on terms which are more favorable, than as set forth herein, the Tribe *shall be entitled* to such greater Allocation or more favorable terms [emphasis added].

27. The State, as explained below, is in breach of this Compact promise.

The Spokane Inter-Tribal Fund

28. In 2007, the State and the Spokane Tribe entered into a Tribal-State Compact under IGRA.

The Spokane Compact, as amended, includes provisions authorizing a Tribal Lottery System and a TAP Procedure substantively identical to those authorized in Appendices X and X2 to the Tulalip Compact, as described above.

29. The Spokane Compact also includes an appendix ("Appendix Spokane") that, among other matters, entitles the Spokane Tribe to acquire Player Terminal Allocation rights from other Eligible Tribes by a mechanism additional to the TAP Procedure authorized in the Spokane and Tulalip Compacts.

30. Under Appendix Spokane, in the event that the Spokane Tribe is unable, after making reasonable efforts, to fulfill its Player Terminal needs by acquiring allocation rights from other Eligible Tribes under the TAP Procedure, the Spokane Tribe may obtain additional needed allocation rights by making quarterly payments (based on a set dollar amount per day

1 for each Player Terminal above its base allocation) into an Inter-Tribal Fund (“ITF”). The
2 monies in the ITF are distributed quarterly among Eligible Tribes by a formula set forth in
3 Appendix Spokane.

4 **The State’s Disavowal of the Compact’s MFT Guarantee**

5 31. Tulalip’s Compact permits Tulalip to meet its terminal allocation needs by only one method:
6 the TAP Procedure. If Tulalip is unable to meet its terminal allocation needs by that
7 procedure, the Compact provides no other means to meet those needs.

8
9 32. In contrast, Appendix Spokane permits the Spokane Tribe to meet its terminal allocation
10 needs by *two* methods – (1) the TAP procedure, and (2) the Spokane ITF. Thus, if the
11 Spokane Tribe is unable to meet its terminal allocation needs by the TAP Procedure, the
12 Spokane Tribe, unlike Tulalip, has recourse to an alternative viable method to meet its
13 terminal allocation needs. For this and other reasons, the allocation of player terminals
14 provided for in Appendix Spokane is on “terms which are more favorable” than those
15 governing the allocation of player terminals set forth in the Tulalip Compact.

16
17 33. On September 14, 2010, Tulalip notified the State of its desire to amend the Compact to
18 reflect the Tribe’s entitlement to the more favorable ITF terms to which the State had agreed
19 with the Spokane Tribe. The Tribe invoked the MFT guarantees of Appendices X and X2 of
20 the Compact, as well as Section 15(d)(i) of the Compact, which permits the Compact to be
21 amended by mutual agreement of the parties.

22
23 34. Representatives of the Tribe and State met several times between October 19, 2010, and
24 August 10, 2011, to discuss the Tribe’s request to amend the Compact to include an ITF.
25 Throughout this process, the State insisted that it was not bound by the MFT guarantees to
26

1 execute an amendment to the Tulalip Compact authorizing an ITF based on the more
2 favorable terms of the Spokane ITF.

3 35. On October 25, 2011, the Tribe invoked the dispute resolution procedures of Section 12(b)(i-
4 ii) of the Compact. Pursuant to those procedures, the State and Tribe met several times
5 and/or exchanged draft amendments between October 25, 2011 and February 29, 2012.

6
7 36. Throughout that process, the State continued to insist that it was not bound by the MFT
8 guarantees in the Compact and persisted (on that and other bases) in its refusal to amend the
9 Tulalip Compact to incorporate the more favorable ITF terms to which the State agreed in its
10 compact with the Spokane Tribe.

11 **The Present Action**

12 37. The Compact provides that in the event the Parties have engaged in dispute resolution under
13 Section 12(b)(i-ii) of the Compact for at least twenty-one days, and either party is unsatisfied
14 with the results, then either party may initiate litigation in an appropriate United States
15 district court seeking resolution of any dispute regarding the Compact.

16
17 38. The Tulalip Tribes of Washington therefore brings this action seeking a declaration that the
18 State's refusal to amend the Compact to reflect Tulalip's entitlement to the more favorable
19 terms of the Spokane ITF constitutes a breach of the MFT guarantees in the Compact. The
20 Tribe seeks an injunction requiring the State to execute an amendment of the Compact to
21 incorporate the more favorable terminal allocation terms of the Spokane ITF. Attachment 1
22 to this Complaint is a proposed amendment containing a Tulalip ITF on terms modeled on
23 the more favorable terms of the Spokane ITF.
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COUNT I

1 39. Section 12.5 of Appendix X and Section 12.4 of Appendix X2 of the August 2, 1991, Tribal-
2 State Compact for Class III Gaming between the Tulalip Tribes of Washington and the State
3 of Washington, as amended, guarantees that “in the event that the State agrees . . . to permit
4 an allocation of Player Terminals . . . on terms which are more favorable, than as set forth
5 herein, the Tribe *shall be entitled* to such . . . more favorable terms.” (emphasis added).

6 40. In Appendix Spokane, including the Spokane ITF, the State agreed “to permit an allocation
7 of Player Terminals . . . on terms which are more favorable” than the Player Terminal
8 allocation terms set forth in the Tulalip Compact and Appendices.

9
10 41. Tulalip is accordingly entitled to amend its Compact to include ITF terminal allocation terms
11 based on the more favorable terminal allocation terms agreed to between the State and the
12 Spokane Tribe as set forth above.

13
14 42. The State’s refusal to agree to amend the Compact to reflect Tulalip’s entitlement to terminal
15 allocation terms based on the more favorable terminal allocation terms agreed to between the
16 State and the Spokane Tribe as set forth above constitutes a breach of Section 12.5 of
17 Appendix X and Section 12.4 of Appendix X2 to the Compact.

18
19 **PRAAYER FOR RELIEF**

20
21 WHEREFORE, Plaintiff respectfully requests that this Court:

22 43. Issue a declaration that the State is in breach of Section 12.5 of Appendix X and Section 12.4
23 of Appendix X2 to the Compact.

24
25 44. Enter an injunction requiring Defendants, within ten (10) days of this Court’s judgment, to
26 execute an amendment to the Compact consisting of the terms set forth in Attachment 1.

45. Award Plaintiff such other relief as the Court deems just and appropriate.

1 Respectfully submitted this 20th day of April, 2012.

2
3
4 s/ PHILLIP E. KATZEN
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6 KANJI & KATZEN, PLLC
7 Attorney for the Tulalip Tribes of Washington

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2012, I electronically filed this COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF with the Clerk of the Court using the CM/ECF system, which will send notice of the filing to all parties registered in the CM/ECF system for this matter.

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