UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

THE STOCKBRIDGE-MUNSEE COMMUNITY, a federally recognized Indian tribe, Plaintiff, v. STATE OF WISCONSIN, and SCOTT WALKER, in his official capacity as the Governor of Wisconsin, and THE HO-CHUNK NATION, a federally recognized Indian tribe, Defendants.	**AFFIDAVIT OF PRESIDENT SHANNON HOLSEY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION** 17-cv-249

I, Shannon Holsey, hereby swear and declare under the penalty of perjury as follows:

1. I am over the age of eighteen of sound mind and body, and except where expressly qualified below, I provide this Affidavit based on personal knowledge obtained in my capacity as President of the Stockbridge Munsee Community ("Tribe" or "SMC").
2. I am President of the Stockbridge-Munsee Community. I have served in that position since 2015. I have served on the Tribal Legislature since 2007.

3. I have been employed by the Tribe's North Star Mohican Casino since 2011, first as Sales and Events Manager and since 2012, as Director of Hospitality.
4. I have advanced educational degrees including a Masters Degree in Human Resources and Employment Relations from Penn State University and a Masters Degree in Strategic Leadership and Communication from Seton Hall University.
5. SMC is a federally recognized Indian tribe with a reservation located in Shawano County, Wisconsin and approximately 25,000 acres of land holdings.
6. Exhibit 1, attached hereto is a true and correct copy of the class III gaming compact with the State of Wisconsin ("State") in 1992 to govern the Tribe's conduct of class III gaming activities on its Indian lands in accordance with IGRA (the "Stockbridge Compact") that went into effect on April 15, 1992.
7. Exhibit 2 attached hereto is a true and correct copy of the first amendment to the Stockbridge Compact, which went into effect on September 24, 1998.
8. Exhibit 3 attached hereto is a true and correct copy of the second amendment to the Stockbridge Compact, which went into effect on December 9, 2003.
9. Exhibit 4 attached hereto is a true and correct copy of the third amendment to the Compact, which went into effect on August 19, 2009
10. The Tribe began operating class III gaming activities at a single location on its trust lands in 1992, in accordance with the Stockbridge Compact.
11. In reliance on the protections included in the Stockbridge Compact, the Tribe expended $110 million, $48 million of which was financed on borrowed funds, to modernize its only class III gaming facility – the North Star Casino Resort – which is located within its reservation in Shawano County.

12. The Tribe's North Star Casino Resort employs more than 460 people, including 56 members of the Tribe.
13. The North Star Casino Resort is the single largest source of revenue for the Tribe's government. Revenues from the North Star Casino Resort constitute more than ninety-five percent (95%) of the tribal government's non-grant funding and eighty-six percent (86%) of the tribes total funding.
14. SMC spends an additional $4,252,791 on tribal member early childhood development, its elders services, social services, community health services, and culture revitalization programs.
15. As an employer, SMC through its governmental and business operations pays a total of $18.8 million in combined annual payroll and benefits, independent of the substantial payroll taxes paid to the State.
16. Because of SMC's location and long history of contributing to the larger community, its gaming revenues not only allow for the provision of essential governmental services for the benefit of SMC and its tribal members, but also for the entire region (including non-Indian residents, visitors and neighbors), surrounding counties, and, ultimately, the State.
17. While SMC provides Wisconsin residents with employment and benefits, it also realizes the value of investing in its future workforce, and has made education a top priority, funding higher education and private schooling for tribal members. SMC's Education Department is subsidized sixty-five percent (65%) by gaming revenues.
18. The Tribe distributes only a nominal amount (approximately on average, $500 per member per year) of its gaming revenues directly to members of the Tribe. The Tribe has

chosen to use its gaming revenues to fund essential government services in accordance with IGRA's purpose of "promoting…strong tribal governments." 25 U.S.C. § 2702.

19. The Tribe's government provides essential government services to tribal members, including: educational support programs; emergency medical services; public works programs; medical, dental, and wellness programs; natural resource conservation and protection; and others.

20. In 1995, the United States Bureau of Indian Affairs (the "BIA") acquired the Pine Hills Golf and Supper Club ("Pine Hills") in trust status for the benefit of the Tribe within what the Tribe believed was its existing reservation.

21. In August 1998, the Tribe began operating approximately 166 class III gaming machines at its Pine Hills Golf and Supper Club ("Pine Hills") under the good faith belief that Pine Hills was located within the Tribe's reservation, and was therefore on lands eligible for class III gaming under IGRA pursuant to 25 U.S.C. § 2719(a)(1).

22. Exhibit 5 attached hereto, and Exhibit C to the Complaint is a true and correct copy of the Deed of Transfer dated June 28, 1969, ("the 1969 Deed") from which a local chapter of the Native American Church conveyed a parcel of land near the Village of Wittenberg, Wisconsin in Shawano County to the United States in trust for the Ho-Chunk Nation (the "Wittenberg Parcel").

23. Exhibits 6 - 8, attached hereto are true and correct copies of Shawano County plat maps from 1978 and 1984 and an aerial photo taken in 1978 of the Wittenberg parcel, which reveal that Ho-Chunk never commenced housing construction on the Wittenberg Parcel within 5 years of the 1969 conveyance.

24. Exhibit 9, attached hereto, and Exhibit D to the Complaint is a true and correct copy of the August 29, 1989 Resolution of the Native American Church stating that its President and Secretary were "authorized to deliver to the Wisconsin Winnebago Tribe a Quit-Claim Deed which removes the aforementioned reversionary clause" with respect to the Wittenberg Parcel.
25. Exhibit 10, attached hereto is a true and correct copy of the class III gaming compact with the State of Wisconsin and the Ho Chunk Nation (the "Ho-Chunk Compact") which went into effect in 1992.
26. Exhibit 11, attached hereto is a true and correct copy of the Quitclaim Deed executed by The Native American Church on April 15, 1993 (the "1993 Deed") claiming to transfer "All right, title and interest, [the Native American Church] may have under the reversionary clause in the Warranty Deed dated June 28, 1969…." with respect to the Wittenberg Parcel. (The "1993 Deed").
27. Exhibit 12, attached hereto is a true and correct copy of first amendment to the Ho-Chunk Compact, which went into effect on February 1, 1999.
28. Exhibit 13, attached hereto is a true and correct copy of the second amendment to the Ho-Chunk Compact, which went into effect on July 3, 2003.
29. Exhibit 14, attached hereto is a true and correct copy of the third amendment to the Ho-Chunk Compact, which went into effect on December 12, 2008.
30. Exhibit 15, attached hereto is a true and correct copy of a news article, *Compacts might spur mini-mart gambling*, Wittenberg Enterprise (November 6, 2003) wherein Marc Marotta, the Wisconsin Secretary of Administration and the State's lead compact negotiator at that time, was quoted shortly after negotiating the gaming compact

amendment with Ho-Chunk wherein he said "the changes for mini-casinos were meant to do no more than lock in current practice, since several tribes have operated mini-marts with slot machines for some time. . . [t]he intent continues to be that these be one-stop shops that sell everything from groceries to gas[.]"

31. Exhibit 16, attached hereto is a true and correct copy of Tribal Gaming in Wisconsin, Informational Paper 88, Wisconsin Legislative Fiscal Bureau, January 2013 ("Informational Paper"). Table One confirms my understanding that:

    a. The Oneida Nation operates ancillary facilities as convenience stores and gas stations with approximately 100 slot machines in each.

    b. The St. Croix Chippewa operates its ancillary facility as a convenience store and gas station with approximately 145 slot machines.

    c. Ho-Chunk currently operates Five Class III gaming facilities.

    d. These Ho-Chunk facilities offer a total of 5,151 gaming machines and 96 table games – more than 40 percent of the total gaming machines in the State of Wisconsin.

    e. The Wittenberg Casino presently includes approximately 502 slot machines, a snack area and a small bar within a stand-alone facility on the Wittenberg Parcel and a separate stand-alone convenience store on the parcel with no gaming.

    f. Table games are currently not being offered at the Wittenberg Casino.

    g. If the Wittenberg Casino is expanded according to the specifications contained in the August 16th Press Release, infra, it will contain more slot machines and hotel rooms than presently exist at Ho-Chunk's class III gaming facility at Black River Falls, Wisconsin, which is not classified as an "Ancillary Facility.

32. In 2008, Ho-Chunk began construction of its Ancillary Facility on the Wittenberg Parcel. Ho-Chunk opened its class III Ancillary Facility on the Wittenberg Parcel (the "Wittenberg Casino") later that year.

33. Attached as Exhibit 17, and attached to the Complaint as Exhibit F is a true and correct copy of an August 16, 2016, press release issued by the Ho-Chunk Nation announcing plans to expand the Wittenberg Casino as part of a $153 million investment in its casinos. The August 16th Press Release outlined plans to install a total of nearly 800 slot machines and 10 table games at the Wittenberg Casino, and to construct an 86-room hotel, and a restaurant, bar, and high-limit gaming area.

34. On August 29, 2016, the Tribe issued a letter to Ho-Chunk expressing concerns about its plans to expand the Wittenberg Casino and requesting a meeting between the leaders of the Tribe and Ho-Chunk to resolve those concerns. Ho-Chunk did not respond to the Tribe's letter.

35. Ho-Chunk has continued efforts to construct the expansion of its Wittenberg Casino, and those efforts are presently ongoing as of the April 19 filing date of the Complaint.

36. I have viewed news reports listed below that Ho-Chunk reportedly distributes more than $12,000.00 per member, per year, or an aggregate of more than $90 million of its gaming revenues to its tribal members on a per capita basis, pursuant to a revenue allocation plan approved by the BIA.

    a. Attached as Exhibit 18, is a true and correct copy of a March 3, 2014 news article, authored by Bill Lueders from the nonprofit Wisconsin Center for Investigative Journalism, Wisconsin.org., *Gambling Has Given Ho-Chunk New Hope.*

b. Attached as Exhibit 19 is a true and correct copy of May 4, 2014 news article authored by Dan Simmons, Wisconsin State Journal, *Hitting the Jackpot: Ho-Chunk Mulling Changes to 18 Money.*

c. Attached as Exhibit 20 is a true and correct copy of May 16, 2014 news article authored by Matt Cash, WKOW 27 Madison, WI, *Ho-Chunk Members Burning Through Money Fast.*

37. Attached as Exhibit 21 is a true and correct copy of Ho-Chunk's Per-Capita Distribution Ordinance. Ho-Chunk Nation Code, Title 2, Section 12, amended and restated, October 20, 2015, retrieved from Ho-Chunk's official web page, ho-chunknation.com on April 16, 2017.

38. The State and the Governor have refused to initiate the dispute resolution procedures in the Ho-Chunk Compact or take other actions to prevent Ho-Chunk from operating the Wittenberg Casino on lands not eligible for gaming under IGRA.

39. The State and the Governor have refused to initiate the dispute resolution procedures in the Ho-Chunk Compact or take other actions to prevent Ho-Chunk from operating the Wittenberg Casino in violation of the Ho-Chunk Compact's restrictions applicable to Ancillary Facilities.

40. Based on my knowledge of the Wisconsin Gaming industry, the 502 slot machines certainly generate more than 50 percent of the net revenue of the Wittenberg facility as compared to the snack area and small bar.

41. The Attached as Exhibit 22 is a true and correct copy of the June 15, 2012 Letter from Paula Hart, Director of the Office of Indian Gaming, to Hon. Peter S. Yucupicio, Chairman of the Pascua Yaqui Tribe of Arizona.

42. Based on my own observations, presently, the size of Ho-Chunk's Wittenberg facility dedicated to gaming far exceeds the size of the facility dedicated to the non-gaming purpose of a snack area and small bar.

43. Based on my knowledge of the Wisconsin Gaming industry, gambling activities presently generate a majority of the revenue for Ho-Chunk's business activities on the Wittenberg Parcel. A gaming facility in a similar location, and of similar size to the Wittenberg Casino, can generate more than $120 per slot machine per day. This would amount to revenue of $96,000 per day for a facility with 800 slot machines, and more than $35 million per year (in addition to the revenue generated by table games).

44. Based on my knowledge of the Wisconsin Gaming industry, Ho-Chunk's additional gaming activities on the Wittenberg Parcel at the expanded Wittenberg Casino will continue to define the Primary Business Purpose of the facility because gaming activities are certain to continue to generate more than fifty percent (50%) of the net revenue of the facility.

45. Attached as Exhibit 23 is a true and correct copy of *Impacts of Proposed Ho-Chunk Wittenberg Expansion*, Market and Feasibility Advisors, January, 2017 ("MFA Report"), an independent report commissioned by the Tribe which concludes that, allowing Ho-Chunk to expand its gaming activities at the Wittenberg Casino in excess of what is already operated will devastate SMC's current gaming operations, causing a $22 million loss in critical governmental revenue each year, which equates to thirty-seven percent (37%) of SMC's existing slot revenue.

46. Based on previous drops in slot machine revenue resulting from the original opening of Wittenberg Casino and the corresponding loss in funding of essential tribal programs, a

loss of thirty-seven percent (37%) of SMC's existing slot revenue equates to a seventy-four percent (74%) loss in funding of essential tribal programs.

47. SMC receives from its gaming operations $16.7 million annually for essential governmental services and programs. With a thirty-seven percent (37%) decline in slot machine net win revenue, which will translate to seventy-four percent (74%) decline in profits transferred to the Tribe that funding will be reduced from $16.7 million to $4.19 million, annually.

48. That lost revenue will result in significant job losses, and drastic cuts to essential governmental services that SMC currently provides to its Tribal members, its residents and the surrounding community. If SMC loses seventy-four percent (74%) from gaming profits for its annual budget, it will be forced to lay off employees throughout all of its businesses, cut funding for essential governmental services, cut or eliminate programs, and delay plans and commitments for future economic growth. The result would cripple SMC's governmental operations and its economy.

49. The reduction in gaming revenues will have a devastating impact on SMC's non-gaming commercial enterprises, including the Little Star Convenience Store, Mohican LP Gas, and Pine Hills Golf Course and Supper Club.

50. SMC will need to eliminate approximately twenty percent (20%) of its full-time casino jobs (92 employees) and curtail or eliminate capital outlays.

51. The overall quality and reputation of the North Star Casino Resort will suffer, including a loss of goodwill with patrons, eroding SMC's customer base.

52. SMC's loss of over $22 million per year in slot machine net win would cause numerous highly-trained employees to leave their positions with SMC to seek other employment.

53. For others, SMC's inability to continue to provide solid jobs, career training, and employment-related benefits would force them to rely upon state and federal assistance.

54. Although a large number of jobs are directly attributable to its casino, SMC's gaming operations also have a significant multiplier effect. There are many off-reservation impacts flowing from SMC's gaming operation, which directly and indirectly generate economic activity within the State through vendor and service agreements, goods and services purchases, and tourism activities.

55. Vendors and contractors who do business with SMC's gaming operation also pay state and local taxes, and purchase goods and services throughout the entire State.

56. Law enforcement; fire, rescue and other emergency services; water and infrastructure development and maintenance; and community health and wellness care, which all serve the general public, would be among the first impacted by reduced funding. If tribal and non-tribal participants from the Shawano County region are unable to use SMC services, these participants will turn to other non-SMC local, county and state sources.

57. If SMC cannot effectively maintain the revenue stream from its gaming operations, its educational programs will be devastated and the education of all tribal members currently enrolled within the programs will be interrupted. Most of these students would be unable to continue their education without financial assistance from SMC.

Signed under penalty of perjury.

Shannon Holsey,
President, Stockbridge Munsee Community

Signed under penalty of perjury,

Shannon Holsey,

President Stockbridge Munsee Community

Subscribed and sworn to before me, this _____ *18th* day of April, 2017

[Notary Seal:]

_____
[signature of Notary]

April L. Dunlavy
[typed name of Notary]

NOTARY PUBLIC

My commission ~~expires:~~ permanent, ~~20~~___.