

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES C. PARKS,

Plaintiff,

v.

TULALIP RESORT CASINO,

Defendant.

No.: C09-1219RSL

Defendant's Motion To Dismiss

NOTE FOR MOTION CALENDAR:
Friday, April 9, 2010

I. INTRODUCTION

In this suit, Plaintiff James Parks ("Plaintiff") has sued the Tulalip Resort Casino alleging that he suffered discrimination based on his race during his employment with Tulalip Resort Casino. This is his *fifth* such lawsuit. The previous four (two in this Court, and two in Tulalip Tribal Court) have been dismissed with prejudice. Because the Tulalip Resort Casino is protected from suits such as this by tribal sovereign immunity, this Court lacks subject-matter jurisdiction over this suit. Even if this Court had jurisdiction, Plaintiff failed to exhaust available tribal, tribal-court, and administrative remedies before bringing this suit. And even if this Court had subject-matter jurisdiction over this suit and Plaintiff had exhausted other available remedies, Plaintiff has sued under laws that do not apply to

1 Tulalip Resort Casino. This suit, like the four before it, should be dismissed with prejudice.

2 **II. FACTUAL AND PROCEDURAL HISTORY**

3 **A. Tulalip Tribes, Tulalip Gaming Organization, and the Tulalip Resort Casino**

4 The Tulalip Tribes is organized under Section 16 of the Indian Reorganization Act, 25
5 USC § 476. It is a federally recognized tribe and enjoys sovereign immunity from suit. *See*
6 72 Fed. Reg. 13647 (March 22, 2007) (listing the Tulalip Tribes as one of the federally
7 recognized tribes). The Tulalip Tribes is governed by an elected Board of Directors in
8 accordance with the Tulalip Tribes Constitution Article III. The Board of Directors is
9 authorized by the Constitution to adopt ordinances and resolutions governing activities on the
10 reservation. (Declaration of Melvin Sheldon ["Sheldon Dec."], filed with this motion, ¶¶ 2,3,
11 5.)

12 The Board of Directors adopted the Tulalip Tribes Law and Ordinance No. 49, which
13 included a statement about the limited, narrow ways in which the Tulalip Tribes would waive
14 its tribal sovereign immunity:

15 The Tulalip Tribes . . . its agencies, enterprises . . . or entities of
16 any kind . . . shall be immune from suit; except where the
17 immunity of the Tribes . . . is expressly, specifically and
18 unequivocally waived by and in a Tulalip tribal or federal
statute, a duly executed contract approved by the Tulalip Board
of Directors, or a duly enacted ordinance or resolution of the
Tulalip Board of Directors.

19 (Declaration of Carla Jones ["Jones Dec."], filed with this motion, at p.25 [TTO 49 § 1.2.2].)

20 In accordance with the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701
21 et seq., the Board of Directors adopted Tulalip Gaming Ordinance 55. (Sheldon Dec. ¶ 7 and
22 Jones Dec. at pp. 141-170.) That ordinance created the Tulalip Gaming Organization
23 ("TGO"), an unincorporated entity of the Tulalip Tribes. The TGO is composed of three
24 gaming facilities, including the Tulalip Resort Casino (the defendant in this case), all of
25 which are located entirely on Tulalip Indian trust land within the boundaries of the Tulalip
26 Indian Reservation. (Declaration of Ken Kettler ["Kettler Dec."], filed with this motion,

¶¶ 2-3.)

The TGO has implemented the Tulalip Casino / Bingo TGO Personnel Policies (“the TGO Personnel Policies”), which sets forth the policies and procedures applicable to employment by the TGO, including employment at Tulalip Resort Casino. (Kettler Dec. at ¶5 and Jones Dec. at 171-215.) The TGO Personnel Policies make it clear to all TGO employees that the Tulalip Tribes and the TGO have not waived their tribal sovereign immunity. (Jones Dec., Ex. 174 [Pers Policy p. 4].) Under the TGO Personnel Policies, employees of the TGO’s facilities have the right to file a formal grievance with respect to employment-related issues. (Jones Dec. at 210-211 [Pers Policy pp. 40-41].)

B. Plaintiff’s Employment With Tulalip Resort Casino and Resignation

Plaintiff James Parks was an employee of the TGO, and began work for the TGO in 2003. (Complaint, Dkt. 4, ¶3(a).) He resigned from work at the TGO on September 8, 2008. (Kettler Dec. at pp. ¶6 and p. 4.)

C. Plaintiff’s First Federal Lawsuit

In September 2007, Plaintiff filed a complaint in this court against defendant Tulalip Resort Casino. (*Parks v. Tulalip Resort Casino*, US District Court for the Western District of Washington, Case No. 07-1406 (“Case No. 07-1406”), Dkt. 5.) In that complaint, Plaintiff alleged that on March 15, 2007, Tulalip Resort Casino failed to promote him to the position of safety manager. He also alleged that he suffered a hostile work environment, harassment, and retaliation. He alleged that he was discriminated against based on his race: African American / Native American.

The Tulalip Resort Casino moved to dismiss his suit because: 1) tribal sovereign immunity protected Tulalip Resort Casino from suit; 2) Tulalip Resort Casino is not subject to Title VII of the Civil Rights Act of 1964, under which Plaintiff had asserted his claims; 3) Plaintiff had not exhausted his federal or tribal administrative remedies before filing suit; and 4) Plaintiff had not exhausted his tribal court remedies before filing suit. (Case No. 07-

1 1406, Dkt. 17.)

2 In an order dated March 19, 2008, this Court, through Judge Martinez, granted the
3 Tulalip Resort Casino's motion and dismissed Plaintiff's complaint. (Case No. 07-1406,
4 Dkt. 22.) This Court held the Tulalip Resort Casino was entitled to tribal sovereign
5 immunity for the claims Plaintiff alleged, and that that immunity deprived this Court of
6 subject-matter jurisdiction over the claims. (*Id.* at pp. 3–6.) Plaintiff did not appeal this
7 Court's order and dismissal.

8 **D. Plaintiff's Tribal-Court Proceedings**

9 Plaintiff next filed suit in Tulalip Tribal Court, twice. In his first suit, filed on
10 September 29, 2008, he alleged that Tulalip Resort Casino subjected him to discrimination,
11 retaliation, hostile work environment, and harassment in violation of Title VII of the Civil
12 Rights Act of 1964. (Documents from Plaintiff's suits in Tulalip Tribal Court were filed
13 with his second federal lawsuit in this court, *Parks v. Tulalip Resort Casino*, US District
14 Court for the Western District of Washington, Case No. 09-0180 ("Case No. 09-0180").
15 Plaintiff's first complaint in Tulalip Tribal Court is found at Case No. 09-0180, Dkt. 1-2,
16 p.18.) The Tulalip Resort Casino moved to dismiss that suit because Plaintiff had failed to
17 provide adequate and timely notice of these claims to the appropriate Tulalip tribal
18 governmental authorities, all as required under the applicable Tulalip Tribal Ordinances.
19 (Case No. 09-0180, Dkt. 1-2, pp. 22-35.)

20 The Tulalip Tribal Court, through Chief Judge Gary Bass, granted the Tulalip Resort
21 Casino's motion to dismiss and, on October 30, 2008, dismissed Plaintiff's complaint with
22 prejudice. (Case No. 09-0180, Dkt. 1-2, pp. 37-38.) Under Tulalip Tribal Court Rules, a
23 party may appeal a decision from Tulalip Tribal Court to the Tulalip Tribal Court of Appeals.
24 (Jones Dec. at p. 134 [TTO 49 §4.43].) Plaintiff, however, did not appeal this dismissal of
25 his complaint with prejudice.

26 Undaunted, Plaintiff continued. He filed another lawsuit against the Tulalip Resort

1 Casino in Tulalip Tribal Court on December 1, 2008 that was in all material aspects the same
2 as his first Tulalip Tribal Court complaint. (Case No. 09-0180, Dkt. 1-2, pp. 43-44.) Again,
3 the Tulalip Resort Casino moved to dismiss this suit, based on the doctrine of res judicata
4 (because the identical suit had already been dismissed). (Case No. 09-0180, Dkt. 1-3, pp.1-
5 6.) The Tulalip Tribal Court, through Chief Judge Gary Bass, granted the Tulalip Resort
6 Casino's motion to dismiss and, on January 26, 2009, dismissed Plaintiff's complaint with
7 prejudice. (Case No. 09-0180, Dkt. 1-4, p.1.) Plaintiff did not appeal the dismissal of this
8 complaint.

9 **E. Plaintiff's Second Federal Lawsuit**

10 Plaintiff filed yet another complaint in this court in February 2009. (*Parks v. Tulalip*
11 *Resort Casino*, US District Court for the Western District of Washington, Case No. 09-0180
12 ("Case No. 09-0180"), Dkt. 6.) Shortly after he served this complaint, he filed an amended
13 complaint. (Case No. 09-0180, Dkt. 8.) In the amended complaint, he explained that he
14 sought relief under Title VII of the Civil Rights Act of 1964 and under the Washington Law
15 Against Discrimination for employment discrimination based on his race, African American.

16 Because his claims were virtually identical to those raised in his first federal lawsuit
17 and in the two tribal-court lawsuits, all of which had been dismissed, the Tulalip Resort
18 Casino moved to dismiss his suit under the doctrine of res judicata. (Case No. 09-0180, Dkt.
19 10.) This Court, through Judge Lasnik, construed Plaintiff's suit and motions as a request to
20 reopen the first federal case, and transferred the matter to Judge Martinez for a determination
21 as to whether Plaintiff's first federal case should be reopened. (Case No. 09-0180, Dkt. 16.)
22 Judge Martinez, in an order dated July 27, 2009, ruled that Plaintiff's first federal case should
23 not be reopened, and closed Plaintiff's second federal lawsuit. (Case No. 09-0180, Dkt. 21.)
24 However, Judge Martinez suggested in his final order that Plaintiff's second federal lawsuit
25 raised the issues of whether Plaintiff had exhausted all tribal court remedies and whether that
26 exhaustion (if he had done so) amounted to an abrogation of the Tulalip Tribes' right to tribal

1 sovereign immunity. (Case No. 09-0180, Dkt. 21, p.3.) He suggested that the proper avenue
 2 for Plaintiff to pursue those arguments was "to file a new lawsuit altogether." (Case No. 09-
 3 0180, Dkt. 21, p.3.)

4 This lawsuit followed.

5 **III. ARGUMENT AND ANALYSIS**

6 **A. Standard for Dismissal Under Rule 12(b)(1)**

7 Under Rule 12(b)(1), when a district court lacks subject-matter jurisdiction over a
 8 suit, the suit must be dismissed. Fed. R. Civ. Proc. 12(b)(1). A court evaluating a motion to
 9 dismiss for lack of subject-matter jurisdiction is not limited to the pleadings, but may
 10 consider affidavits or testimony outside the pleadings to determine jurisdiction. *St. Clair v.*
 11 *City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989); *McCarthy v. United States*, 850 F.2d 558,
 12 560 (9th Cir. 1988).

13 The issue of tribal sovereign immunity is jurisdictional. *Pan American Co. v. Sycuan*
 14 *Band of Mission Indians*, 884 F.2d 416, 418 (9th Cir. 1989), *overruled on other grounds by*
 15 *C&L Eters, Inc. v. Citizen Band Potawatomi Indian Tribe*, 532 U.S. 411 (2001). Thus, the
 16 issue is proper for consideration under Rule 12(b)(1).

17 **B. Defendant Is Immune from Suit in the Federal Courts Under the Doctrine of Tribal Immunity**

18 Under the doctrine of tribal sovereign immunity, courts recognize and respect tribal
 19 self-government and tribal sovereignty. *Three Affiliated Tribes of the Ft. Berthold*
 20 *Reservation v. Wold Eng'g P.C.*, 476 U.S. 877, 890 (1986). It is recognized as "a necessary
 21 corollary to Indian sovereignty and self-governance." *Id.* at 890. Under the doctrine, tribes
 22 are immune from lawsuits in federal courts unless Congress has abrogated that immunity or
 23 unless the tribe has clearly waived its immunity from suit. *Kiowa Tribe v. Mfg Technologies,*
 24 *Inc.*, 523 U.S. 751, 754 (1998); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978);
 25 *Allen v. Gold Country Casino*, 464 F.3d 1044, 1047 (9th Cir. 2006). A congressional
 26

1 abrogation of tribal sovereign immunity must “‘unequivocally’ express that purpose,” and a
2 tribe’s waiver of its tribal sovereign immunity must be “clear.” *C&L Enterprises, Inc., v.*
3 *Citizen Bank Potawotomi Indian Tribe of Oklahoma*, 532 U.S. 411, 418 (2001). Tribal
4 sovereign immunity is extended to tribes’ commercial and governmental actions, and to
5 entities established by a tribe to conduct those activities when the entity functions as an arm
6 of the tribe. *Allen*, 464 F.3d at 1046; *Marceau v. Blackfeet Housing Authority*, 455 F.3d 974,
7 978 (9th Cir. 2006). If a tribe or tribal entity is immune under the doctrine, federal courts
8 lack subject-matter jurisdiction to hear suits against the tribe or tribal entity. *Normandy*
9 *Apts., Lts. F. U.S. Dept of Housing & Urban Dev.*, 554 F.3d 1290, 1295 (10th Cir. 2009).

10 Whether a tribal entity (as opposed to the tribe itself) is entitled to sovereign
11 immunity depends on whether the entity “acts as an arm of the tribe so that its activities are
12 properly deemed to be those of the tribe.” *Allen*, 464 F.3d at 1046. The Ninth Circuit has
13 held that three factors indicate that a tribal entity is entitled to immunity. First, the creation
14 of the entity should be dependent on several layers of government approval. Second, the
15 purpose of the entity should be to promote tribal economic development, self-sufficiency,
16 and strong tribal government, and not solely to produce revenue. And third, granting
17 immunity should protect the tribe’s treasury and benefit the tribe economically and
18 otherwise. *Allen*, 464 F.3d at 1046. If these are present, the tribal entity is entitled to
19 sovereign immunity as an arm of the tribe, and is immune from suit in federal court.

20 **1. Collateral Estoppel**

21 This Court has already found that the Tulalip Resort Casino is an entity entitled to
22 sovereign immunity from the types of claims that Plaintiff makes. Under the doctrine of
23 collateral estoppel, he should not be allowed to argue that issue again. The Ninth Circuit has
24 explained that

25 collateral estoppel applies only where it is established that (1)
26 the issue necessarily decided at the previous proceeding is
identical to the one which is sought to be relitigated; (2) the first

proceeding ended with a final judgment on the merits; and (3) the party against whom collateral estoppel is asserted was a party or in privity with a party at the first proceeding.

Hydranautics v. FilmTec Corp., 204 F.3d 880, 885 (9th Cir. 2000). If those elements are met, the party against whom the issue was decided may not relitigate it. The elements are all met here. In Case No. 07-1409, this Court decided that Tulalip Resort Casino is an arm of the Tulalip Tribes, and as such, that it is entitled to sovereign immunity. That issue is identical to the issue here. That action ended with a final judgment in favor of the Tulalip Tribes, which Plaintiff did not appeal. The parties were identical as those in this suit. As a simple matter of collateral estoppel, Plaintiff may not now relitigate the issue of whether the Tulalip Resort Casino is subject to suit in this Court.

2. Defendant Is Immune As An Arm of the Tulalip Tribes.

The Court's prior ruling on this issue was correct. Here, the Defendant Tulalip Resort Casino is an entity established to function as an arm of the Tulalip Tribes. It is an entity subject to immunity under the factors set forth in *Allen*. First, the creation of the Tulalip Resort Casino required several layers of government approval. The Tulalip Tribes adopted a tribal gaming ordinance, T.G.O. 55, under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.* (Sheldon Dec., ¶7, Kettler Dec., ¶ 2.) Under T.G.O. 55, the Tulalip Tribes established the Tulalip Gaming Organization (TGO). The TGO established three gaming facilities, including Defendant Tulalip Resort Casino. (Kettler Dec., ¶3.) The TGO is overseen by the Tulalip Tribes' Board of Directors, and the TGO may not enter into contracts in excess of \$100,000 without the approval of the Tulalip Tribes' Board of Directors. (Sheldon Dec., ¶9.) Multiple layers of government approval were therefore necessary for Defendant to conduct gaming activities solely under the auspices of the Tulalip Tribes.

Second, the purpose of the TGO and the Tulalip Resort Casino is to "promote Tulalip tribal self-sufficiency, economic development, employment, job training, and a strong Tulalip tribal government, and to fund and provide essential social programs and services."

1 (Jones Dec. at p. 142 [T.T.O. 55, Sec. 1].)

2 And third, the Tulalip Resort Casino benefits the Tulalip Tribes economically and in
3 other ways. Proceeds generated by the TGO (including those generated by the Tulalip
4 Resort Casino) are dispersed in accordance with a Revenue Allocation Plan that was adopted
5 by the Tulalip Tribes' Board of Directors and approved by the Secretary of the Interior.
6 (Sheldon Dec. ¶ 10.) These proceeds go directly to the provision of services for the Tribe
7 and its members. (*Id.*)

8 Because the factors identified in *Allen* are all present here, the Tulalip Resort Casino
9 is an arm of the Tulalip Tribes. As such, it is entitled to the same tribal sovereign immunity
10 as the Tulalip Tribes.

11 **3. Congress Has Not Abrogated Defendant's or the Tulalip Tribes'**
12 **Immunity.**

13 Congress has not abrogated the Tulalip Tribes' or the Tulalip Resort Casino's tribal
14 sovereign immunity. (Sheldon Dec., ¶ 4.) Plaintiff has not alleged nor pointed to any
15 evidence that Congress has abrogated the Tulalip Tribes' sovereign immunity. Notably, he
16 has, over the course of his prior lawsuits, had numerous opportunities to present evidence
17 that Congress has done so. He has not. Congress has not abrogated their immunity.

18 **4. Neither Defendant Nor the Tulalip Tribes Have Waived Immunity.**

19 The Tulalip Tribes, the TGO, and the Tulalip Resort Casino have not waived their
20 right of tribal sovereign immunity. (Sheldon Dec. ¶ 11; Jones Dec. at p.25 [TTO 49 §
21 1.2.2].) Plaintiff has not alleged otherwise, nor provided any evidence otherwise in any of
22 his suits. They have not waived their tribal sovereign immunity.

23 **5. Conclusion: The Tulalip Resort Casino Is Protected from this Suit by**
24 **Tribal Sovereign Immunity.**

25 The defendant, Tulalip Resort Casino, is an arm of the Tulalip Tribes, and is entitled
26 to the same tribal sovereign immunity as the Tulalip Tribes. The Tulalip Tribes and Tulalip
Resort Casino have not waived their right to tribal sovereign immunity, nor has Congress

1 abrogated their right to tribal sovereign immunity. They are immune from suit in federal
 2 court, so this Court lacks subject-matter jurisdiction over Plaintiff's claims against Tulalip
 3 Resort Casino. Accordingly, his claims must be dismissed.

4 **C. Plaintiff Failed to Exhaust Available Tribal Court Remedies.**

5 Even if Tulalip Resort Casino was subject to suit in U.S. federal courts, under
 6 principles of comity, U.S. District Courts defer acting on such suits until a plaintiff exhausts
 7 available tribal remedies. *Elliott v. White Mountain Apache Tribal Court*, 566 F.3d 842,
 8 846-847 (9th Cir. 2009). Plaintiff failed to do so. He filed a suit in Tulalip Tribal Court,
 9 which was dismissed. He failed to appeal that dismissal. He filed a second suit in Tulalip
 10 Tribal Court, which was also dismissed. He failed to appeal that dismissal as well. His
 11 failure to exhaust his administrative remedies precludes him from bringing suit in federal
 12 courts.

13 **D. Even If Plaintiff Had Exhausted Available Tribal Administrative and Tribal**
 14 **Court Remedies, Such Exhaustion Is Not an Abrogation of Tribal Immunity.**

15 In this Court's order of July 27, 2009, it suggested that an issue to be resolved was
 16 whether Plaintiff's exhaustion of all tribal court remedies (which he did not do) "amounts to
 17 an abrogation of a Native American tribe's right to sovereign immunity." With all due
 18 respect to the Court, this is not an issue, and confuses the issues of tribal sovereignty and
 19 exhaustion of tribal court remedies. The U.S. Supreme Court has explained that the
 20 exhaustion doctrine, under which federal district courts abstain from a suit involving a tribe
 21 or tribal entity, involves only the issue of whether the tribal court has jurisdiction over an
 22 action. *National Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845,
 23 856-57 (1985). As the court stated, once it is clear that a tribal court has jurisdiction over
 24 parties and a matter, the ultimate decision on the matter lies with the tribal court, and the
 25 district courts should not be involved with the relitigation of the matter. *Iowa Mut. Ins. Co.*
 26 *v. LaPlante*, 480 U.S. 9, 19-20 (1987). As long as a tribal court has jurisdiction over a matter,

the tribal court renders the final determination on the substance of the matter. In other words, the federal district courts do not act as courts of appeal to tribal courts (with the exception being if there is a question of whether the tribal court has jurisdiction over the parties and matter, which is not at issue here). *AT&T Corp. v. Coeur d'Alen Tribe*, 295 F.3d 899, 903-904 (2002). Exhaustion of tribal court remedies is not an abrogation of tribal sovereign immunity.

Here, there was clear jurisdiction with the Tulalip Tribal Court for Plaintiff's claims. Plaintiff has never (in 4 lawsuits) challenged the tribal court's jurisdiction. That court dismissed his claims twice, not because it lacked jurisdiction, but because Plaintiff failed to comply with the prerequisites to bringing his claims. He did not appeal the tribal court's decision. The tribal court, which has jurisdiction over his claims, is the final arbiter of his claims. It has ruled. By doing so, the Tulalip Tribes has not waived or abrogated its sovereign immunity from suit in federal courts.

E. Defendant Is Exempt from the Laws that Plaintiff Sued Under.

Finally, even if Plaintiff was not barred from suing the Tulalip Resort Casino due to tribal sovereign immunity issues, he cannot maintain a suit under either employment law that he has sued under.

1. Title VII

a. Title VII Does Not Apply to Defendant

Plaintiff has brought discrimination, harassment, and retaliation claims under Title VII of the Civil Rights Act of 1964. That law, however, expressly excludes Indian tribes from its application:

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include

(1) the United States, a corporation wholly owned by the Government of the United States, **an Indian tribe**, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5)

42 U.S.C. § 2000e(b) (emphasis added). This exclusion from Title VII also extends to organizations that are arms of sovereign tribes. *Pink v. Modoc Indian Health Project, Inc.*, 157 F.3d 1185, 1188 (9th Cir. 1998).

Plaintiff's suit alleges claims under Title VII against the Tulalip Resort Casino, which is operated by TGO, an arm of the Tulalip Tribes. Title VII does not apply to these entities. He may not bring claims under Title VII.

b. Even If Title VII Applied, Plaintiff Failed to Exhaust Available Administrative Remedies with the EEOC.

Even assuming Plaintiff could bring claims for discrimination and harassment under Title VII, to do so, he must exhaust administrative remedies with the EEOC. 42 U.S.C. §2000e-5(f)(1); *Jasch v. Potter*, 302 F.3d 1092, 1094 (9th Cir. 2002). Exhaustion with the EEOC requires bringing a charge with the EEOC and receiving a determination from the EEOC. 42 U.S.C. §2000e-5(f)(1). Plaintiff failed to do so here. Moreover, he is time-barred from doing so. An employee who wishes to pursue a claim under Title VII must bring a charge with the EEOC within 180 days or 300 days (depending on the state in which the employee resides). 42 U.S.C. §2000e-5(e)(1). Plaintiff's last day of work with the Tulalip Resort Casino was September 8, 2008. More than 300 days (and more than 180 days) had elapsed from that date by the time he filed this suit, and he did not file a charge with the EEOC in that time. Even if he could bring claims under Title VII, he is now time-barred from doing so.

2. Washington Law Against Discrimination

Plaintiff has also brought claims under Washington's Law Against Discrimination. As a general matter, Indian tribes are not subject to state law, subject to certain exceptions

1 that are not relevant here. *E.g., California v. Cabazon Band of Mission Indians*, 480 U.S.
2 202 (1987). The WLAD is a state law, and no exception allows it to be applied to the Tulalip
3 Tribes. Thus, Plaintiff cannot bring a claim under the WLAD against the Tulalip Resort
4 Casino.

5 **IV. CONCLUSION**

6 Plaintiff's suit, his *fifth* such suit against the Tulalip Resort Casino regarding his
7 employment there, should be dismissed with prejudice.

8 DATED: March 12, 2010

9 Bullivant Houser Bailey PC

10
11 /s/ Brian K. Keeley

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15 Attorneys for Defendant Tulalip Resort Casino

CERTIFICATE OF SERVICE

I, Genevieve Schmidt, certify that on March 12, 2010, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

Plaintiff, James C. Parks 5912 6 th Ave NW Tulalip, WA 98271	
--	--

Dated: March 12, 2010

BULLIVANT HOUSER BAILEY PC

By: 
 Genevieve Schmidt
 genevieve.schmidt@bullivant.com

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