

The Honorable _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KANIUM VENTURA,

Plaintiff

v.

SNOQUALMIE INDIAN TRIBE,;
SNOQUALMIE TRIBAL POLICE;
SNOQUALMIE TRIBAL PROSECUTOR;
SNOQUALMIE TRIBAL COUNCIL

NO.

KANIUM VENTURA'S COMPLAINT
FOR DECLARATORY RELIEF

I. JURISDICTION AND FUTILITY OF TRIBAL EXHAUSTION

1.1 This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 based on the federal question doctrine.

1.2 More specifically, this Court has federal question jurisdiction because the question as to whether a tribal court has adjudicative jurisdiction over a case is a federal question under federal common law. The interpretation of federal law is central to the resolution of cases that involve the question whether a tribal court has exceeded its jurisdiction,

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1 1.3 Proceeding any further in Snoqualmie Tribal Court would be futile because the
2 Tribal Council has repeatedly interfered in Mr. Ventura's defense in his criminal matter. The
3 Tribal Council's interference required the Tribal judge to resign prior to her ruling on Mr.
4 Ventura's motion to dismiss based on sovereign immunity.

5 1.4 Judge Montoya-Lewis withdrew from the present criminal matter to prevent
6 conveying "the impression that any person or organization is in a position to influence the
7 judge." In elaborating, Judge Montoya-Lewis explained:

8 [T]he intervention of the Tribal Council into these matters has
9 created a situation that makes it impossible for the Court to act
10 without creating the perception that it is subject to inappropriate
11 outside influences (emphasis added).

12 1.5 Tribal Council's interference has also operated in other ways to preclude the
13 Tribal Court from functioning such as by dismissing the Tribal Court Clerk. Consequently,
14 there can be no trial and no successful appeal in the criminal prosecution facing Mr. Ventura.
15 There is no way for the Tribal Court to move forward in a manner that comports with due
16 process.

17 1.6 As of today's date, no judge has been appointed to replace Judge Montoya-
18 Lewis in this case. Any appointment of a judge in Tribal court would have to be approved by
19 the Tribal Council and would thus still be subject to claims of interference and an appearance
20 of impropriety given the Tribal Council's recent conduct and its manipulation of the Tribal
21 Court. Further, pursuant to the Tribal Judiciary Code, any appointment of an appellate panel of
22 judges would be controlled by the Tribal Council as well and would suffer from the same
23 defects.

24 1.7 Forcing further litigation in an ethically defective and non functioning
25 Snoqualmie Tribal Court would be futile.

II. PARTIES

2.1 Plaintiff Kanium Ventura: Kanium Ventura is an enrolled member of the Snoqualmie Indian Tribe. He is an elected member of the Snoqualmie Tribal Council.

2.2 Defendant Snoqualmie Indian Tribe

2.3 Defendant Snoqualmie Tribal Police

2.4 Defendant Snoqualmie Tribal Prosecutor: The Snoqualmie Tribe contracts with Northwest Intertribal Court System for prosecutorial assistance.

2.5 Defendant Snoqualmie Tribal Council: The Snoqualmie Tribal Council is the elected legislative body of the Snoqualmie Indian Tribe.

III. BACKGROUND

3.1 Mr. Ventura is a duly elected member of the Council and was elected in September, 2007. Mr. Ventura is a member of the Kanim family, one of the five primary families comprising the Tribe. The Tribe comprises approximately 650 enrolled members and 350 voting members. The five families have experienced significant internal political turmoil in recent years. Ventura decl., ¶¶1-2.

3.2 On December 29, 2008, the Snoqualmie Tribal Council passed Resolution 2003-2008 authorizing the Tribal Chairman to execute a consulting agreement with Moss Adams, LLC, not to exceed \$22,000.00. On January 12, 2009, the Snoqualmie Tribal Council rescinded this authorization with the passage of Resolution 01-2009. Mr. Ventura was subsequently charged with Official Misconduct and Criminal Impersonation on September 16, 2010 and arraigned on November 15, 2010. Ventura decl., ¶¶3-5.

3.3 The allegations leveled against Councilman Ventura all arise from the same legislative acts: the passage of Snoqualmie Indian tribe Resolution 2003-2008. See Charging Document, attached as Ex. 3 to Ventura Decl.

1 3.4 The charges against Councilman Ventura are factually based on his meeting
 2 with representatives of Moss Adams, LLC, to discuss the types of services that the company
 3 could provide in auditing Tribal records. Mr. Ventura's acts were based upon his exercise of
 4 powers conferred upon Tribal Council members under Article VIII of the Snoqualmie Tribal
 5 Constitution and upon Mr. Ventura's management duties regarding the Casino operation by
 6 virtue of Mr. Ventura's position as a director of the Snoqualmie Entertainment Authority under
 7 Tribal Council Act 8.2. Mr. Ventura's authority was also memorialized by the Tribal Council
 8 and is evidenced in Resolution 2003-2008. Ventura decl., ¶¶3-5

9 3.5 The actions undertaken by Councilman Ventura, rather than being criminal in
 10 nature, are indisputably within his statutory and Constitutional authority under Article VIII of
 11 the Constitution of the Snoqualmie Indian Tribe. *Infra* Section IV. Other members of the
 12 Tribal Council have interfered in the Tribal Court to prevent Councilman Ventura from having
 13 a fair hearing to establish his innocence in regards to all of the matters charged and thus have
 14 prevented him for carrying out his responsibilities on the Tribal Council. Ventura decl., ¶ 6.

15 3.6 On November 13, 2010, the Snoqualmie General Membership suspended Mr.
 16 Ventura from his duties as a Council member and prohibited Mr. Ventura from entering the
 17 property encompassing the Tribal Headquarters until cleared of all charges pending in the
 18 Snoqualmie Tribal Court. Resolution 02-2010 and Ventura decl., ¶6.

19 3.7 On November 15, 2010, Mr. Ventura was cited for criminal trespass for
 20 attempting to enter his official offices. Ventura decl., ¶7.

21 3.8 On November 18, 2010, Mr. Ventura, through counsel, filed a civil lawsuit
 22 against Shelley Burch, Matt Mattson, and Nina Repin seeking injunctive and declaratory relief.
 23 On December 8, 2010, Mr. Ventura, through counsel, filed a motion which moved the
 24 Snoqualmie Tribal Court to strike Defendant's council in the related civil action. Ventura
 25 decl., ¶8, 10.

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1 3.9 On November 26, 2010, the Snoqualmie Tribal Council passed Resolution 277-
2 2010 which recused the Tribal Court Clerk from her duties. This position remained vacant
3 until approximately December 13, 2010, when the Council authorized the Northwest Intertribal
4 Court System to appoint a new clerk. At that time, Ms. Bobbie Jo Norton assumed the duties
5 of Court Clerk. Ventura decl., ¶9.

6 3.10 On December 26, 2010, the Tribe filed a motion for Judge Montoya-Lewis to
7 recuse herself in the pending criminal matter. On December 30, 2010, the Tribal Council
8 removed Judge Montoya-Lewis from hearing the related pending civil matter. Resolution 304-
9 2010. On December 31, 2010, Judge Montoya-Lewis removed herself from hearing the
10 present criminal action. Ventura decl., ¶11-13.

11 3.11 There is presently no judge assigned or appointed to hear any of Councilman
12 Ventura's pending motions to dismiss based on sovereign immunity.

13 IV. SOVEREIGN IMMUNITY OF COUNCILMAN KANIUM VENTURA

14 4.1 The case law regarding sovereign immunity of Tribes is well-known. *See*
15 *Kiowa Tribe of Oklahoma v. Manufacturing Tech., Inc.* 523 U.S. 751, 754, 118 S. Ct. 1700
16 (1998). The Snoqualmie Tribal Council, as the governing body of the Snoqualmie Tribe of
17 Indians, is protected by the Tribe's sovereign immunity and thus, a waiver of that immunity
18 must be unequivocal and expressly granted. *See Ninigret Dev. Corp. v. Narragansett Indian*
19 *Wetuomuch Hous. Auth.*, 207 F.3d 21, 29 (1st Cir. 2000).

20 4.2 The courts have also ruled that the individual Tribal Council members, as
21 representatives of the Tribe, have sovereign immunity for their actions within their duties as
22 Tribal officials. *Fletcher v. United States*, 116 F.3d 1315, 1324 (10th Cir. 1997); *See also*
23 *Madison v. The Tulalip Tribe*, 2004 WL 5752597 (Tulalip Tribal Court of Appeals, Nov. 18,
24 2004).

1 (a) The key inquiry “turns on whether the government official was
2 empowered to do what he did; i.e., whether even if he acted erroneously, it was within the
3 scope of his delegated power.” *United States v. Yakima Tribal Court*, 806 F.2d 853, 860 (9th
4 Cir. 1986).

5 (b) Tribal Councilman Ventura is granted broad legislative powers as
6 contained within Article VIII of the Tribal Constitution and within Tribal Council Act 8.2,
7 which established the Snoqualmie Entertainment Authority that manages and supervises the
8 Casino operation.

9 (c) Tribal Councilman Ventura was acting within the scope of his delegated
10 powers at all times and in all circumstances.

11 (d) The burden is upon the Tribal prosecutor to demonstrate that there is a
12 clear and explicit waiver of the Tribe’s sovereign immunity in order to prosecute Tribal
13 Councilman Ventura and that burden has not been satisfied in this instance.

14 4.3 The claims against Councilman Ventura pertain to actions he undertook with the
15 understanding that the Tribal Council had expressly approved the retention of an audit firm as
16 expressed in numerous acts of the Tribal Council including a Tribal Council resolution,
17 discussions and meetings by and between Tribal Council members, and an access letter signed
18 by the Tribal Council Chairman permitting Moss Adams the ability to enter Tribal property to
19 conduct its audit actions.

20 4.4 The investigation conducted by the Tribe demonstrates that the Tribal Council
21 discussed hiring an audit firm beginning in October 2008 and continued discussing the topic
22 until Resolution 2003-2008 was passed on December 29, 2008. Councilman Ventura
23 undertook his contact with Moss Adams as a result of numerous discussions at Tribal Council
24 meetings, culminating in the approval of Resolution 2003-2008 which authorized the hiring of
25 Moss Adams to conduct an audit of the Tribal casino.

1 4.5 Under the doctrine of tribal sovereign immunity, neither a Tribe nor its officials
 2 may be sued without a clear and explicit waiver of immunity. *C&L Enterprises v. Citizen*
 3 *Band Potawatomi Indian Tribe*, 532 U.S. 411, 418, 121 S. Ct. 1589 (2001). Further, within
 4 Article I, Section 3, of the Tribal Constitution, the Tribe asserts its sovereign immunity except
 5 in the instance when the Tribal Council has “expressly and unambiguously” waived its
 6 immunity. Neither the Tribe nor Councilman Ventura have expressly and unambiguously
 7 waived their sovereign immunity in this case. In fact, the Tribal Council adopted a resolution,
 8 2003-2008, which expressly approved of the retention of Moss Adams to conduct an audit and
 9 is the best evidence that privileged Tribal Council discussions were later reduced to Tribal law
 10 in the form of a resolution.

11 4.6 The Tribal prosecutor has produced no evidence showing that the Tribal
 12 Council or Councilman Ventura expressly and unambiguously waived the Tribe’s sovereign
 13 immunity from suit such that the Tribal prosecutor may maintain the present criminal
 14 proceedings against Tribal Councilman Ventura. Further, the alleged resolution passed by a
 15 select group of Tribal members claiming to be elders, which attempts to ex-post facto make the
 16 actions undertaken by Councilman Ventura illegal, does not and cannot waive Councilman
 17 Ventura’s sovereign immunity. The Court should therefore dismiss the present charges against
 18 Councilman Ventura because he is immune from suit for his actions carried out in his official
 19 capacity as a Tribal Councilman.

20 V. CAUSE OF ACTION: DECLARATORY JUDGMENT

21 5.1 Councilman Ventura realleges and incorporates by reference all preceding
 22 paragraphs as if fully set forth herein.

23 5.2 Councilman Ventura is entitled to a declaration that he is immune from suit for
 24 actions he undertook that were within the scope of his delegated powers at all times and in all
 25 circumstances.

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1 5.3 Councilman Ventura is entitled to a declaration that the Tribal Court lacks
2 jurisdiction to hear the criminal matter against him.

3 VI. PRAYER FOR RELIEF

4 Plaintiff Councilman Kanium Ventura prays for the following relief against the
5 Defendants:

6 6.1 Entry of a declaratory judgment against the Snoqualmie Tribe that: (a) the
7 Snoqualmie Tribal Court lacks subject matter jurisdiction to bring charges against Councilman
8 Kanium Ventura for the actions he undertook which were within the scope of his delegated
9 powers; and (b) all criminal charges presently before the Snoqualmie Tribal Court be dismissed
10 with prejudice.

11 6.2 An award of any costs incurred; and

12 6.3 Such other and further relief as the Court deems just and equitable.

13 DATED this 10th day of January, 2011.

15 s/Scott B. Henrie, WSBA #12673
16 _____
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