

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

THE STATE OF ARIZONA,
GILA RIVER INDIAN COMMUNITY,
a federally recognized Indian tribe,

**(b) COUNTY OF RESIDENCE OF FIRST LISTED
PLAINTIFF** Pinal and Maricopa Counties
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

THE TOHONO O'ODHAM NATION

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE
LOCATION OF THE TRACT OF LAND INVOLVED

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE
NUMBER)**

Thomas C. Horne, SBN002951
Michael Tryon, SBN003109
Arizona Attorney General Office
1275 W. Washington, Phoenix, AZ 85007
Telephone: (602) 542-8355

Linus Everling, Deputy General Counsel, SBN 019760
Thomas L. Murphy, Litigation Counsel, SBN 022953
GILA RIVER INDIAN COMMUNITY
Law Office
525 W. Gu u Ki
Sacaton, Arizona 85247
Telephone: (520) 562-9763

James P. Tuite (*Pro Hac Vice* application forthcoming)
Merrill C. Godfrey (*Pro Hac Vice* application forthcoming)
Jason T. Hauter, SBN 022188
AKIN GUMP STRAUSS HAUER & FELD LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036-1564
Telephone: (202) 887-4000

Larry Rosenfeld, SBN 004426
Brian J. Schulman, SBN 015286
GREENBERG TRAURIG
2375 East Camelback Road, Suite 700
Phoenix, AZ 85016
Telephone: (602) 445-8000

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

Citizen of This State	Citizen of Another State
PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State	PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4 Incorporated and Principal Place of Business in Another State
Citizen or Subject of a <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

IV. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liab. REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28USC 158 <input type="checkbox"/> 423 Withdrawal 28USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 831 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395FF) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates, etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
---	---	--	--	--

V. ORIGIN (PLACE AN X IN ONE BOX ONLY)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened
<input type="checkbox"/> 5 another district (specify)		<input type="checkbox"/> 6 Multidistrict Litigation	
<input type="checkbox"/> 7 Judge from		<input type="checkbox"/> Appeal to District Magistrate Judgment	

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

25 U.S.C. § 2710(d)(7)(A)(ii), to enjoin the Tohono O'odham Nation (the "Nation") from engaging in gaming activity in violation of the Compact.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A **CLASS ACTION**

Check yes only if demanded in complaint:

COMPLAINT: ☐**JURY DEMAND:** ☐ YES ☒ NO**VIII. RELATED CASE(S)** (See instructions):

IF ANY

JUDGE _____ DOCKET NUMBER _____

 DATE February 14, 2011
 UNITED STATES DISTRICT COURT

SIGNATURE OF ATTORNEY OF RECORD /s/Michael Tryon

1 Thomas C. Horne (#002951)
Attorney General
2 Michael Tryon (#003109)
Senior Litigation Counsel
3 1275 W. Washington, Phoenix AZ 85007
Telephone: (602) 542-8355
4 tom.horne@azag.gov
michael.tryon@azag.gov
5 *Attorneys for Plaintiff the State of Arizona*

6 Linus Everling (# 019760)
General Counsel
7 GILA RIVER INDIAN COMMUNITY
525 W. Gu u Ki, P.O. Box 97, Sacaton, AZ 85247
8 Telephone: (520) 562-9763
Linus.Everling@gric.nsn.us
9

James P. Tuite (Pro Hac Vice application forthcoming)
10 Merrill C. Godfrey (Pro Hac Vice application forthcoming)
Jason T. Hauter (# 022188)
11 AKIN GUMP STRAUSS HAUER & FELD LLP
1333 New Hampshire Avenue, N.W., Washington, D.C. 20036-1564
12 Telephone: (202) 887-4000
jtuite@akingump.com
13 mgodfrey@akingump.com
jhauter@akingump.com
14

Brian J. Schulman (# 015286)
15 GREENBERG TRAURIG LLP
2375 E. Camelback Rd., Suite 700, Phoenix, AZ 85016
16 Telephone: 602-445-8000
schulmanb@gtlaw.com
17 *Attorneys for Plaintiff Gila River Indian Community*

18 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
19

20 THE STATE OF ARIZONA,

21 and

22 The GILA RIVER INDIAN COMMUNITY,
a federally recognized Indian tribe,

23 Plaintiffs,

24 v.

25 THE TOHONO O'ODHAM NATION,

26 Defendant.
27
28

Case No.:

COMPLAINT

1 For their complaint against the defendants, Plaintiffs State of Arizona and the Gila
2 River Indian Community allege and state:

3 **NATURE OF THE ACTION**

4 1. The State of Arizona and the Gila River Indian Community (“Community”)
5 bring this action under the 2002 Tohono O’odham Nation–State of Arizona Gaming
6 Compact (“Compact”) (attached as Exhibit A) and the Indian Gaming Regulatory Act
7 (“IGRA”), 25 U.S.C. § 2710(d)(7)(A)(ii), to enjoin the Tohono O’odham Nation (the
8 “Nation”) from engaging in gaming activity in violation of the Compact.

9 2. The Compact, which incorporates by reference numerous provisions of
10 IGRA, limits “Class III” gaming (casino-type gaming, as defined by IGRA) to gaming
11 facilities located on the “Indian Lands of the Tribe.” Compact § 3(j)(1). In addition, the
12 Compact provides that “[g]aming Activity on lands acquired after the enactment” of IGRA
13 October 17, 1988 “shall be authorized only in accordance with 25 U.S.C. § 2719”; that
14 section of IGRA in turn prohibits gaming on lands taken into trust after 1988, subject to
15 certain exceptions. Further, Compact § 3(p) prohibits the Nation from engaging in “any
16 Class III gaming not specifically authorized in this Section 3.” In sum, the Compact
17 explicitly prohibits gaming on lands acquired after 1988 unless those lands qualify under
18 an IGRA exception in § 2719.

19 3. The Nation has repudiated these obligations and has a definite and concrete
20 plan for violating them within as little as 21 days by beginning unauthorized gaming
21 activities on a parcel of land in suburban Phoenix. Its announcements and publicity
22 regarding these plans have already destabilized the political relationships among tribes and
23 between those tribes and the State that are embodied in the Compact and in other identical
24 Compacts with other tribes.

25 4. In January 2009, the Nation announced that it owned a parcel of land in
26 Glendale, Arizona (the “Glendale Property”), and that it planned to build a new casino (its
27 fourth) on the parcel, which is approximately 160 miles from its tribal headquarters and
28 over 100 miles north of its nearest existing casino. It applied to the Department of the

1 Interior to have the land taken into trust for its benefit by the United States pursuant to the
2 Gila Bend Reservation Replacement Act, Pub. L. No. 99-503, 100 Stat. 1798 (1986), and to
3 have Interior declare that the land meets one of the IGRA exceptions, for land taken into
4 trust as part of a “settlement of a land claim.”

5 5. In July 2009, in an effort to accelerate the building of the casino and to
6 prevent Interior from determining whether the chosen site for the casino was permissible
7 under IGRA, the Nation informed Interior that it believed that a gaming determination was
8 not necessary for the land to be taken into trust, and it “withdrew” its request for a gaming-
9 eligibility determination under IGRA. Interior acquiesced and issued a decision on July 23,
10 2010 (the “Parcel 2 decision”) stating its intention to take Parcel 2 into trust without
11 making the gaming determination required under IGRA.

12 6. On September 16 and September 21, 2010, respectively, the Community and
13 the City of Glendale, Arizona filed suit in the United States District Court for the District
14 of Arizona to prevent the Secretary from acquiring Parcel 2 in trust for the Nation on the
15 grounds that, *inter alia*, the Parcel 2 decision violated the Administrative Procedure Act by
16 failing to include a determination under IGRA regarding whether the land is eligible for
17 gaming, and by failing to comply with the provisions of the Gila Bend Act. Soon
18 thereafter, a group of individuals filed a similar complaint that was consolidated with the
19 prior actions. The Nation was allowed to intervene as a defendant. Leaders of the Arizona
20 legislature were allowed to intervene as plaintiffs, and the Governor of Arizona was
21 allowed to appear as amicus curiae in support of plaintiffs. The State of Arizona recently
22 moved to intervene as a plaintiff, and that pending motion is not opposed by either the
23 federal government defendants or the Nation.

24 7. The plaintiffs in those pending actions seek a declaration that the Parcel 2
25 decision is arbitrary and capricious, an abuse of discretion, and otherwise contrary to law,
26 as well as an injunction to prevent Interior and the United States of America from
27 accepting Parcel 2 in trust.
28

8. During the pendency of that litigation, the Nation has stated publicly that it intends to conduct gaming operations on the parcel as soon as it is in trust without seeking any determination that the land is eligible for gaming.

9. In recent pleadings in that litigation, the United States claimed for the first time that an IGRA determination on the gaming eligibility of Parcel 2 need not ever be issued by Interior. Moreover, the United States has stated that during the pendency of that litigation, it may still take the land into trust, and thereby effectively allow the Nation to begin gaming, with only 21 days advance notice. Therefore, absent an injunction, illegal gaming on Parcel 2 is imminent.

10. The United States has stated that one reason it should not be required to determine whether Parcel 2 is eligible for gaming is that “States have the ability to seek to enjoin activities conducted in violation of a Tribal-State compact” by invoking 25 U.S.C. § 2710(d)(7)(A)(ii). Case No. 2:10-cv-01993-DGC, Doc. 117, at 12.

11. This complaint seeks to enjoin the Nation from conducting gaming activities in violation of the Compact.

PARTIES

12. The State of Arizona is a party to the Compact.

13. The Gila River Indian Community is a federally recognized Indian tribe whose headquarters are at 525 W. Gu u Ki, Sacaton, Arizona 85247. The Community has three casinos on its reservation lands in the Phoenix metropolitan area and has entered into a gaming Compact with the State of Arizona that is identical to the Compact at issue here.

14. Defendant Tohono O’odham Nation is a federally recognized Indian tribe whose headquarters are in Sells, Arizona. The Nation has two casinos in the Tucson area and a third casino in Why, Arizona.

JURISDICTION AND VENUE

15. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction) and 25 U.S.C. § 2710(d)(7)(A)(ii) (jurisdiction over actions brought by States or Indian tribes to enjoin gaming activity that would violate a Tribal-State Compact).

16. Venue in this Court is proper under 28 U.S.C. §§ 1391(b)(2), because the negotiation and signing of the Compact occurred in this federal district and the real property that is the subject of the action is located in this federal district.

GENERAL ALLEGATIONS

I. BALLOT PROPOSITION 202

17. IGRA provides that an Indian tribe may conduct Class III gaming on its Indian lands only if authorized pursuant to a Tribal-State Compact. On June 24, 1993, the State of Arizona and the Nation entered into a compact authorizing gaming on the “Indian Lands of the Tribe” at up to four locations. 1993 Compact § 3(j)(1).

18. The 1993 Compact provides that “[g]aming Activity on lands acquired after the enactment of the Act of [sic] October 17, 1988 [IGRA] shall be authorized only in accordance with 25 U.S.C. § 2719.” 1993 Compact 3(j)(1).

19. On August 18, 1993, Interior published in the Federal Register its approval of the Compact, as required by IGRA.

20. In 2000, three years before the scheduled expiration of the existing Arizona Class III Tribal State Gaming Compacts with various Arizona tribes, negotiations for new gaming compacts began.

21. Seventeen Arizona Indian tribes, including the Community and the Nation, negotiated with then-Governor Jane Hull and the Arizona Department of Gaming regarding material issues that would be a part of each compact between the State and the seventeen tribes. The tribes viewed their public support as critical to voter approval for the compacts in the initiative process.

22. While it was anticipated that each Indian tribe would sign its own compact with the State of Arizona, the material terms and conditions that would be in each compact were negotiated as if it were one compact.

23. After two years of negotiations, the State of Arizona and the seventeen tribes reached agreement on the number of slot machines and the number and location of casinos that would be authorized by the new Compacts. The seventeen tribes negotiated among

1 themselves to determine how many casinos and machines each would be allocated from the
2 total.

3 24. The new Compacts would increase the total number of permitted gaming
4 devices for each tribe but reduce the total number of authorized gaming facilities in the
5 State from 38 to 29. As in the 1993 compacts, gaming would not be allowed on any lands
6 acquired after October 17, 1988 except “in accordance with 25 U.S.C. 2719.” Compact
7 3(j)(1); see A.R.S. § 5-601.02(I)(6)(J)(1). These limits on the number and location of
8 casinos were a key part of the consideration bargained for by the State.

9 25. This carefully constructed balance was embodied in Proposition 202, which
10 was approved by Arizona voters in November 2002.

11 26. Proposition 202 was offered as a way to defeat authorization of racetrack-
12 based gaming (or “racinos”), the authorization of which was also on the ballot, as
13 Proposition 201.

14 27. In 2002, the seventeen tribes, including the Community and the Nation,
15 formed a coalition called “Arizonans for Fair Gaming and Indian Self Reliance” to urge
16 Arizona voters to approve Proposition 202 and reject Proposition 201.

17 28. The 17-Tribe Coalition provided voters with a document called “Answers to
18 Common Questions” stating:

19 **Q. Will Proposition 202 allow Indian tribes to build casinos outside of tribal**
20 **lands?**

21 A. No. The location of Indian gaming facilities is controlled by federal law—
22 not by state law. Under the federal Indian Gaming Regulatory Act (IGRA),
23 Indian gaming is generally limited to existing reservation lands established
before 1988.

24 **Q. Does Proposition 202 limit the numbers of tribal casinos in Arizona?**

25 A. Yes. In fact, Proposition 202 reduces the number of authorized gaming
26 facilities on tribal land, and limits the number and proximity of facilities each
27 tribe may operate. **Under Proposition 202, there will be no additional**
28 **facilities authorized in Phoenix, and only one additional facility**
permitted in Tucson. As specified in the initiative, the number of facilities

per tribe ranges between 1 and 4, and tribal casinos must be at least 1-1/2 miles apart. [Emphasis added.]

29. A notation of the face of this document stated that it was paid for with “[m]ajor funding provided by Ak-Chin Indian Community, Gila River Indian Community, Salt River Pima-Maricopa Indian Community, Tohono O’odham Nation and other Indian tribes in Arizona.”

30. The Nation’s present Chairman publicly supported Proposition 202 and urged Arizona voters at a Town Hall Meeting in Tucson to cast their vote for approval. On September 25, 2002, he argued that voters should choose Proposition 202 because it would not “open gaming into cities.” He argued that opening gaming into cities would be unacceptable, because “the citizens of Arizona have, repeatedly over the years, expressed their desire to keep gaming on the reservation.”

31. Then-Governor Jane Dee Hull campaigned in favor of Proposition 202 and against Proposition 201. On the official Proposition 202 ballot, the Governor urged Arizona voters to rely upon the balance struck. Governor Hull stated: “I strongly urge you to vote ‘YES’ on Proposition 202, the ‘17 Tribe’ Initiative. Proposition 202 keeps casinos limited to Indian reservations and limits the number of casinos on reservations . . . Proposition 202 ensures that no new casinos will be built in the Phoenix metropolitan area and only one in the Tucson area for at least 23 years. Proposition 202 keeps gaming on Indian Reservations and does not allow it to move into our neighborhoods . . . Plain and simple, this is the best gaming proposal for all Arizona citizens.”

32. In its support for Proposition 202, the Nation both expressly and impliedly represented to the State, to other tribes, and to the voters of Arizona that the Compacts would not authorize any tribe, including the Nation, to open a casino in the Phoenix area.

33. On election day 2002, Proposition 202 was adopted by the voters. Proposition 201 was defeated.

1 34. The State and other tribes relied on the Nation's representation that the
2 Compacts would not allow another casino in the Phoenix area in supporting and advocating
3 for the passage of Proposition 202 and in entering into the Compacts.

4 35. None of the Compacts became effective until all tribes with gaming facilities
5 in Maricopa, Pima or Pinal Counties had their new Compacts approved by the Secretary.
6 2002 Compact Section 2(vv)(4).

7 36. The 2002 Compacts were amended in 2008, but those amendments do not
8 relate to the issues in this case.

9 **III. THE NATION'S APPLICATION TO HAVE PARCEL 2**
10 **TAKEN INTO TRUST FOR GAMING ACTIVITIES**

11 37. The Nation had a secret plan to build a casino in the Phoenix area
12 notwithstanding its vocal support of Proposition 202 and its entering into the 2002
13 Compact.

14 38. Within months of the passage of Proposition 202, in August 2003 the Nation
15 purchased approximately 135 acres of land at 91st and Northern Avenues, in Glendale,
16 Arizona (the "Glendale Property"). The Glendale Property includes Parcel 2.

17 39. The purchase of the Glendale Property was made through a Delaware
18 corporation called "Rainier Resources, Inc." that is wholly owned by the Nation. Rainier
19 Resources, Inc. acquired title in fee simple. The Nation structured the transaction in this
20 manner to conceal its ownership of the property.

21 40. The Nation kept its ownership of the Glendale Property secret for more than
22 five years. During that time, a public high school was opened across the street from the
23 site. Restaurants, hotels, and retail establishments were developed, all without the
24 knowledge that the Tribe had future plans to establish an Indian reservation and develop
25 Indian gaming in the neighborhood.

26 41. On January 20, 2009, Rainier Resources, Inc. conveyed the fee title to the
27 Nation.
28

1 42. On January 27, 2009, the Nation's Legislative Council passed Resolution No.
2 09-049, which states in part:

3 BE IT ... RESOLVED that the Tohono O'odham Legislative
4 Council hereby requests that the Office of Indian Gaming of the
5 Department of the Interior issue an opinion that the Settlement
6 Property was acquired under the settlement of a land claim, and
 thus is excepted from IGRA's general prohibition on gaming on
 lands acquired after the date of enactment of IGRA.

7 43. On January 28, 2009, the Nation filed an application asking Interior to take
8 the Glendale Property in trust for the benefit of the Nation pursuant to the Gila Bend Act.

9 44. The letter conveying the Nation's fee-to-trust application stated: "The
10 Nation intends to use portions of the property for gaming purposes pursuant to IGRA."
11 The application asserted that gaming would be authorized under an IGRA exception for
12 land taken into trust as part of "a settlement of a land claim." 25 U.S.C. § 2719(b)(1)(B)(i).

13 45. Interior's regulations and policies require that a determination under IGRA
14 must be made before land is taken into trust for the purpose of gaming.

15 46. The Secretary has the responsibility to enforce IGRA requirements in
16 conjunction with any decision to take lands into trust for gaming purposes.

17 47. Interior and the National Indian Gaming Commission have agreed in a
18 Memorandum of Understanding, dated January 1, 2009, which was renewed in substantial
19 part on January 1, 2010, "that whether a tribe meets one of the exceptions in 25 U.S.C. §
20 2719," including the "settlement of a land claim" exception, "is a decision made by the
21 Secretary when he or she decides to take land into trust or restricted fee for gaming."

22 48. In a letter dated July 17, 2009, the Nation purported to withdraw its request
23 for a gaming determination. At that time and at all times since then, the Nation has openly
24 acknowledged its continuing intention to use portions of the Glendale Property, including
25 Parcel 2, for gaming activities.

26 49. Interior has never issued a gaming determination for either the Glendale
27 Property or Parcel 2 and has stated that it does not intend to do so.
28

V. THE GILA BEND ACT IS NOT THE SETTLEMENT OF A LAND CLAIM WITHIN THE MEANING OF IGRA

50. The Nation has argued incorrectly that the Gila Bend Act is the Congressional enactment of a settlement of a “land claim.”

51. An Indian “land claim,” as Congress intended when it enacted IGRA, is an Indian tribe’s claim to superior title to land as against a non-Indian entity, whether private or governmental.

52. Interior’s regulations define “land claim” for purposes of 25 U.S.C. § 2719 as “any claim by a tribe concerning the impairment of title or other real property interest or loss of possession that . . . [i]s in conflict with the right, or title or other real property interest claimed by an individual or entity (private, public, or governmental).” 25 C.F.R. § 292.2 (emphasis added).

53. The prototypical Indian land claims when Congress enacted IGRA were claims such as those made by Eastern tribes pursuant to the Indian Nonintercourse Act. See, title 25, Chapter 19, United States Code. In each instance, a state or other non-Indian entity acquired title and possession of the Indian land in contravention of federal law. As a result, the Indian tribes brought actions for the immediate possession of the land and ejectment of the non-Indian occupants based upon the tribe’s superior title to the land as recognized and guaranteed by federal law.

54. Congress settled virtually all of these actions in the 1980s just prior to the enactment of IGRA.

55. The Gila Bend Act is not a settlement of a land claim because enactment of the Gila Bend Act did not settle any claim by the Nation to superior title to lands as against another claimant. The Gila Bend Act established a mechanism that would enable the Nation to acquire land to replace, on an acre-for-acre basis, the land that was subject to a flowage easement.

56. In 1950, Congress enacted the Flood Control Act, Pub. L. No. 81-516, 64 Stat. 163, authorizing the construction of the Painted Rock Dam in central Arizona. The Painted Rock Dam was built ten miles downstream from the Nation’s Gila Bend

1 Reservation, which was held in trust by the United States for the benefit of the Nation.
2 H.R. Rep. No. 99-851 at 4 (1986).

3 57. Before completion of the dam, the Army Corps of Engineers (the “Corps”)
4 repeatedly attempted to obtain a flowage easement over the lands (both Indian trust lands
5 and non-Indian fee lands) that would be intermittently flooded as a result of the dam’s
6 construction. *Id.* at 5. Because the Corps could not reach an agreement with the Nation or
7 other non-Indian landowners, it eventually instituted condemnation proceedings in federal
8 district court. *Id.* Through those proceedings, the Corps obtained a condemnation of fee
9 title for the non-Indian lands and a flowage easement for the affected Indian and non-
10 Indian lands pursuant to a 1964 federal court decree. *Id.*

11 58. The flowage easement included approximately 7,700 acres of the Nation’s
12 Gila Bend Reservation, for which the Corps paid \$130,000.00 in compensation to the
13 Nation. *Id.*

14 59. In the late 1970s and early 1980s, high rainfall caused repeated flooding
15 upstream of Painted Rock Dam, “each time resulting in a large standing body of water.” *Id.*
16 “[T]he floodwaters destroyed a 750-acre farm that had been developed at tribal expense
17 and precluded any economic use of reservation lands.” *Id.* at 5-6.

18 60. In 1981, the Nation petitioned Congress “for a new reservation on lands in
19 the public domain which would be suitable for agriculture.” *Id.* at 6

20 61. In 1986, Congress enacted the Gila Bend Act. Section 4(a) of the Gila Bend
21 Act provides that, in return for the Nation’s assignment “to the United States [of] all right,
22 title, and interest of the Tribe in nine thousand eight hundred and eighty acres of land
23 within the Gila Bend Indian Reservation,” the Secretary would pay the Nation \$30 million
24 (plus accrued interest from the date of the Act’s enactment).

25 62. Therefore, the Nation’s claims with respect to the Gila Bend Reservation
26 were not “in conflict with the right” of the United States to take the land pursuant to the
27 lawful authority of the Flood Control Acts. Rather, the Gila Bend Act allowed the Nation
28 to receive additional compensation for land that was lawfully acquired by the United States.

63. The Nation confirmed this view of the Gila Bend Act when it represented that the Compact did not allow establishment of a casino in the Phoenix area.

VI. THE NATION'S PLAN TO CONDUCT GAMING IN VIOLATION OF THE COMPACT

64. The Nation has continued to state publicly that it will commence gaming activities as soon as Parcel 2 is acquired in trust by the United States.

65. For instance, the Nation has issued press releases, e.g., Press Release, "Tohono O'odham Nation Releases Updated West Valley Resort Renderings" (Jan. 11, 2011)(available at <http://www.westvalleyopportunity.com/wp-content/uploads/2011/01/Press-Release-Tohono-Oodham-Nation-Releases-Updated-West-Valley-Resort-Renderings1.pdf>), has been quoted in numerous newspaper articles, e.g., Carolyn Dryer, "Tohono O'odham Council Chairman Norris Confident in Future of Project," *Glendale Star*, Jan. 12, 2011, available at http://www.glendalestar.com/news/article_c4955ee6-1e6f-11e0-a4fd-001cc4c03286.html; Ned Norris J, Op-Ed, "West Valley Resort Offers Unprecedented Economic Opportunity," *Ariz. Republic* (Nov. 25, 2010)(available at <http://www.azcentral.com/arizonarepublic/opinions/articles/2010/11/25/20101125norris-tohono26.html>), and has updated its website, www.westvalleyopportunity.com, claiming that it has satisfied all the requirements necessary to conduct gaming and that gaming will occur as soon as Parcel 2 is acquired in trust.

66. Just last month, the Nation announced a "Phase I" approach that provides updated plans and renderings for gaming not on the entire 135 acre as originally planned, but for immediate gaming on the 54-acre Parcel 2, further signaling its intention to immediately conduct gaming on Parcel 2. Mike Sunnucks, "Tohono O'odham Update West-Side Casino Plan," *Phoenix Bus. J.* (Jan. 17, 2011)(available at <http://www.bizjournals.com/phoenix/news/2011/01/17/tohono-oodham-update-casino-plan.html>).

67. In addition to statements in the press, the Nation has similarly represented in court filings that an Indian lands opinion on the gaming eligibility of Parcel 2 is only

“advisory” and that “IGRA does not require the Secretary to issue an Indian lands opinion” at any point in the land into trust process. Case No. 2:10-cv-01993-DGC, Doc. 98, at 20.

68. The Nation now has no intention of seeking or obtaining an Indian lands opinion from federal authorities before commencing gaming operations on Parcel 2.

69. The United States takes this point even further by representing that “IGRA does not require pre-gaming, authorizing determinations (from either the Secretary or the NIGC) that the subject land is eligible for gaming under § 2719.” Case No. 2:10-cv-01993-DGC, Doc. 95, at 19.

70. Moreover, the United States has stated that it may take the land into trust with only 21 days advance notice, making the prospect of illegal gaming on Parcel 2 imminent.

FIRST CAUSE OF ACTION

BREACH OF THE 2002 TOHONO O’ODHAM NATION–STATE OF ARIZONA GAMING COMPACT

71. The Community realleges and incorporates the preceding paragraphs.

72. Parcel 2 does not qualify under 25 U.S.C. § 2719 for gaming activities, and therefore the Compact requires the Nation not to conduct such activities on Parcel 2.

73. The Nation has repeatedly and unequivocally represented publicly and in federal court that it intends to conduct gaming activities on Parcel 2 as soon as the land is in trust, in violation of the Compact and 25 U.S.C. § 2719. In so doing it has repudiated its obligations under the Compact not to conduct such gaming on such lands.

74. The Nation has repeatedly and unequivocally represented publicly and in federal court that it does not intend to seek authorization pursuant to 25 U.S.C. § 2719 for gaming on the Glendale property or Parcel 2.

75. The Nation previously represented that it did not view the Compact as permitting establishment of another casino in the Phoenix area, and the parties to the Compacts relied on that representation in entering into the Compacts, just as the voters relied on those representations in authorizing the Compacts.

Compact and IGRA made clear to the Nation long before it purchased Parcel 2 that illegal gaming activity can be enjoined by this Court. Both the State and the Community would suffer irreversible hardship by having illegal gaming proceed unchecked on Parcel 2 and by having the heavily negotiated, voter-approved, and highly regulated balance of gaming facilities in Arizona disrupted.

83. The plaintiffs are entitled to preliminary and permanent injunctive relief prohibiting the Nation from ever conducting gaming on the Glendale Property or Parcel 2 because the land does not satisfy Section 3(j)(1) of the Compact and is not authorized by Section 3(p).

RELIEF REQUESTED

WHEREFORE, in accordance the Compact and the Indian Gaming Regulatory Act, 25 U.S.C. § 2710(d)(7)(A)(ii), the Plaintiffs seek:

1. A finding that gaming on the Glendale Property, including Parcel 2, is prohibited by the Compact and does not satisfy 25 U.S.C. § 2719;
2. A finding that the Tohono O'odham Nation has breached and repudiated the Compact;
3. An injunction prohibiting the Nation from conduct gaming activities on the Glendale Property or Parcel 2;
4. An award to the Plaintiffs of their reasonable attorneys' fees;
5. All other costs and fees as allowed by law; and
6. Such other and additional relief as the Court deems just and equitable.

DATED this 14th day of February 2011.

Thomas C. Horne (#002951)
Attorney General

/s/ Michael Tryon
Michael Tryon (#003109)
Senior Litigation Counsel
Attorneys for Plaintiff the State of Arizona

Linus Everling, General Counsel (# 019760)
GILA RIVER INDIAN COMMUNITY

James P. Tuite (Pro Hac Vice application forthcoming)
Merrill C. Godfrey (Pro Hac Vice application
forthcoming)

Jason T. Hauter (# 022188)
AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Brian J. Schulman

Brian J. Schulman (# 015286)
GREENBERG TRAURIG LLP

Attorneys for Plaintiff Gila River Indian Community