

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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THE STOCKBRIDGE-MUNSEE  
COMMUNITY, a federally recognized Indian  
tribe,

Plaintiff,

v.

STATE OF WISCONSIN, SCOTT  
WALKER, in his official capacity as the  
Governor of Wisconsin, and THE HO-  
CHUNK NATION, a federally recognized  
Indian tribe,

Case No. 17-cv-249

Defendants.

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**ANSWER OF THE HO-CHUNK NATION**

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Defendant, the Ho-Chunk Nation (the “Nation”), by their attorneys Rapport and Marston and Husch Blackwell LLP, answers the correspondingly numbered paragraphs of Plaintiff’s Complaint as follows:

**INTRODUCTION**

The Introduction to the Complaint does not constitute factual allegations and, therefore, does not require a response from the Nation. To the extent any facts are properly alleged, the Nation denies the same, consistent with its responses to the enumerated paragraphs, below.

**NATURE OF THE CASE**

1. Answering Paragraph 1, the Nation admits only that the Plaintiff is seeking the relief set forth in its Complaint, which speaks for itself. The Nation expressly denies that Plaintiff is entitled to any of the relief sought in this lawsuit. The Nation denies any remaining allegations contained in Paragraph 1.

2. Answering Paragraph 2, the Nation admits only that the Plaintiff is seeking the relief set forth in its Complaint, which speaks for itself. The Nation expressly denies that Plaintiff is entitled to any of the relief sought in this lawsuit. The Nation denies any remaining allegations contained in Paragraph 2.
3. Answering Paragraph 3, the Nation admits only that the Plaintiff is seeking the relief set forth in its Complaint, which speaks for itself. The Nation expressly denies that Plaintiff is entitled to any of the relief sought in this lawsuit. The Nation denies any remaining allegations contained in Paragraph 3.
4. Answering Paragraph 4, the Nation admits only that the Plaintiff is seeking the relief set forth in its Complaint, which speaks for itself. The Nation expressly denies that Plaintiff is entitled to any of the relief sought in this lawsuit. The Nation denies any remaining allegations contained in Paragraph 4.
5. Answering Paragraph 5, the Nation admits only that the Plaintiff is seeking the relief set forth in its Complaint, which speaks for itself. The Nation expressly denies that Plaintiff is entitled to any of the relief sought in this lawsuit. The Nation denies any remaining allegations contained in Paragraph 5.
6. Answering Paragraph 6, the Nation admits only that the Plaintiff is seeking the relief set forth in its Complaint, which speaks for itself. The Nation expressly denies that Plaintiff is entitled to any of the relief sought in this lawsuit. The Nation denies any remaining allegations contained in Paragraph 6.

**PARTIES**

7. Answering Paragraph 7, admits.
8. Answering Paragraph 8, admits.

9. Answering the first sentence of Paragraph 9, the Nation lacks sufficient knowledge or information to answer the allegations contained therein and therefore denies the same. Answering the second sentence of Paragraph 9, admits.
10. Answering Paragraph 10, admits.

## **JURISDICTION AND VENUE**

11. Paragraph 11 contains various legal conclusions to which no response is necessary. To the extent a response is required, the Nation denies that this Court has jurisdiction over this action. The Nation denies any remaining allegations contained in Paragraph 11.
12. Paragraph 12 contains various legal conclusions to which no response is necessary. To the extent a response is required, the Nation denies that this Court has jurisdiction over this action. The Nation denies any remaining allegations contained in Paragraph 12.
13. Paragraph 13 contains a legal conclusion to which no response is necessary. To the extent a response is required, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 13 and therefore denies the same. Further, the Nation affirmatively alleges that the class III gaming compact between Plaintiff and the State speaks for itself and the Nation denies any characterization of that compact that is inconsistent with its terms. The Nation denies any remaining allegations contained in Paragraph 13.
14. Paragraph 14 contains a legal conclusion to which no response is necessary. To the extent a response is required, the Nation denies that this Court has jurisdiction

over this action. The Nation denies any remaining allegations contained in Paragraph 14.

15. Paragraph 15 contains a legal conclusion to which no response is necessary. To the extent a response is required, the Nation denies that this Court has jurisdiction over this action and that, accordingly, venue is improper in this Court. The Nation admits it is located within this District and denies any remaining allegations contained in Paragraph 15.

#### **GENERAL ALLEGATIONS**

16. Answering Paragraph 16, admits, upon information and belief.
17. Answering Paragraph 17, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 17 and therefore denies the same. Further, the Nation affirmatively alleges that the Stockbridge Compact speaks for itself and denies any characterization of the Stockbridge Compact that is inconsistent with its terms.
18. Answering Paragraph 18, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 18 and therefore denies the same.
19. Paragraph 19 contains various legal conclusions to which no response is necessary. To the extent a response is required, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 19 and therefore denies the same. Further, the Nation affirmatively alleges that the Stockbridge Compact, as amended, speaks for itself and denies any characterization of the Stockbridge Compact that is inconsistent with its terms.

20. Answering Paragraph 20, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 20 and therefore denies the same. Further, the Nation affirmatively alleges that the Stockbridge Compact, as amended, speaks for itself and denies any characterization of the Stockbridge Compact that is inconsistent with its terms.
21. Answering Paragraph 21, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 21 and therefore denies the same. Further, the Nation affirmatively alleges that the Stockbridge Compact, as amended, speaks for itself and denies any characterization of the Stockbridge Compact that is inconsistent with its terms.
22. Answering Paragraph 22, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 22 and therefore denies the same. Further, the Nation affirmatively alleges that the Stockbridge Compact, as amended, speaks for itself and denies any characterization of the Stockbridge Compact that is inconsistent with its terms.
23. Answering Paragraph 23, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 23 and therefore denies the same.
24. Answering Paragraph 24, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 24 and therefore denies the same.
25. Answering Paragraph 25, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 25 and therefore denies the same.
26. Answering Paragraph 26, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 26 and therefore denies the same.

27. Answering Paragraph 27, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 27 and therefore denies the same.

**THE STATE'S COMPACT ENFORCEMENT ACTION AGAINST THE TRIBE**

28. Answering Paragraph 28, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 28 and therefore denies the same.
29. Answering Paragraph 29, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 29 and therefore denies the same.
30. Answering Paragraph 30, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 30 and therefore denies the same.
31. Answering Paragraph 31, the Nation lacks sufficient knowledge or information to answer the allegations contained in Paragraph 31 and therefore denies the same.

**HO-CHUNK'S GAMING OPERATIONS**

32. Paragraph 32 contains a legal conclusion to which no response is necessary. To the extent a response is required, the Nation admits that the Wittenberg Parcel was conveyed to the Nation on or about June 28, 1969. Further, the Nation affirmatively alleges that the 1969 Deed speaks for itself and denies any characterization of the 1969 Deed that is inconsistent with its terms. The Nation denies any remaining allegations contained in Paragraph 32.
33. Answering Paragraph 33, denies. The Nation affirmatively alleges that it complied fully with any and all conditions contained within the 1969 Deed and that the Wittenberg Parcel has been held by the United States in Trust for the Ho-Chunk Nation since 1969.

34. Answering Paragraph 34, the Nation admits that, on or about August 29, 1989, a resolution was approved by the Native American Church. Further, the Nation affirmatively alleges that the resolution speaks for itself and denies any characterization of that resolution that is inconsistent with its terms. The Nation denies any remaining allegations contained in Paragraph 34.
35. Answering Paragraph 35, admits.
36. Answering Paragraph 36, the Nation admits that it entered into a class III gaming compact with the State of Wisconsin in 1992 (the “Ho-Chunk Compact”). Further, the Nation affirmatively alleges that the Ho-Chunk Compact speaks for itself and denies any characterization of the Ho-Chunk Compact that is inconsistent with its terms. The Nation denies any remaining allegations contained in Paragraph 36.
37. Answering Paragraph 37, the Nation admits that, on or about April 15, 1993, the Native American Church executed a quitclaim deed in favor of the Nation. Further, the Nation affirmatively alleges that the quitclaim deed speaks for itself and denies any characterization of that quitclaim deed that is inconsistent with its terms. The Nation denies any remaining allegations contained in Paragraph 37.
38. Answering Paragraph 38, admits.
39. Answering Paragraph 39, the Nation admits that it executed an amendment to the Ho-Chunk Compact with the State in 2003. Further, the Nation affirmatively alleges that the Ho-Chunk Compact, as amended, speaks for itself and denies any characterization of the Ho-Chunk Compact that is inconsistent with its terms. The Nation denies any remaining allegations contained in Paragraph 39.

40. Answering Paragraph 40, the Nation affirmatively alleges that the Ho-Chunk Compact, as amended, speaks for itself and denies any characterization of the Ho-Chunk Compact that is inconsistent with its terms. The Nation denies any remaining allegations contained in Paragraph 40.
41. Answering Paragraph 41, the Nation admits that it began construction of a gaming facility on the Wittenberg Parcel in 2008 and that it opened that gaming facility in 2008. The Nation lacks sufficient knowledge or information to respond to the remaining allegations contained in Paragraph 41 and therefore denies the same.
42. Answering Paragraph 42, the Nation admits that it issued a press release on August 16, 2016. Further, the Nation affirmatively alleges that the press release speaks for itself and denies any characterization of the press release that is inconsistent with its terms. The Nation denies any remaining allegations contained in Paragraph 42.
43. Answering Paragraph 43, the Nation admits that it received a letter from the Plaintiff in or about August 2016. The Nation denies that it did not respond to that letter. Further, the Nation affirmatively alleges that the August 2016 letter speaks for itself and denies any characterization of the August 2016 letter that is inconsistent with its terms. The Nation denies any remaining allegations contained in Paragraph 43.
44. Answering Paragraph 44, admits.
45. Answering Paragraph 45, the Nation admits that the Wittenberg facility, if expanded according to specifications contained in the August 16th press release, will contain more slot machines and hotel rooms than presently exist at the



Nation's Black River Falls, Wisconsin gaming facility. The remaining allegations contained in Paragraph 44 contain a legal conclusion to which no response is necessary. To the extent a response is required, the Nation lacks sufficient knowledge or information to answer the remaining allegations contained in Paragraph 44 and therefore denies the same.

- 46. Answering Paragraph 46, admits.
- 47. Paragraph 47 is too vague to permit the Nation to answer, and therefore, the Nation denies the allegations in Paragraph 47.

**COUNT I: THE STATE'S VIOLATION OF THE STOCKBRIDGE COMPACT'S REVENUE SHARING PROVISIONS**

- 48. Answering Paragraph 48, the Nation incorporates its responses to Paragraphs 1 through 47 as if fully set forth herein.
- 49. Paragraph 49 contains a legal conclusion to which no response is necessary. To the extent a response is required, the Nation lacks sufficient knowledge or information to respond to the allegations contained in Paragraph 49 and therefore denies the same. Further, the Nation affirmatively alleges that the Stockbridge Compact speaks for itself and denies any characterization of the Stockbridge Compact that is inconsistent with its terms. The Nation denies any remaining allegations contained in Paragraph 49.
- 50. Paragraph 50 contains a legal conclusion to which no response is necessary. To the extent a response is required, the Nation affirmatively alleges that the Ho-Chunk Compact speaks for itself and denies any characterization of the Ho-Chunk Compact that is inconsistent with its terms.

51. Answering Paragraph 51, the Nation lacks sufficient knowledge or information to respond to the allegations contained in Paragraph 51 and therefore denies the same.

52. Paragraph 52 contains a legal conclusion to which no response is necessary. To the extent a response is required, the Nation lacks sufficient knowledge or information to respond to the allegations contained in Paragraph 52 and therefore denies the same. Further, the Nation affirmatively alleges that the Ho-Chunk Compact speaks for itself and denies any characterization of the Ho-Chunk Compact that is inconsistent with its terms. The Nation denies any remaining allegations contained in Paragraph 52.

53. Answering Paragraph 53, denies.

**COUNT II: THE STATE'S UNLAWFUL TAX OF THE TRIBE'S GAMING REVENUES**

54. Answering Paragraph 54, the Nation incorporates its responses to Paragraphs 1 through 53 as if fully set forth herein.

55. Answering Paragraph 55, the Nation affirmatively alleges that the Stockbridge Compact speaks for itself and denies any characterization of the Stockbridge Compact that is inconsistent with its terms. The Nation denies any remaining allegations contained in Paragraph 55.

56. Paragraph 56 contains a legal conclusion to which no response is necessary.

57. Paragraph 57 contains a legal conclusion to which no response is necessary.

58. Paragraph 58 contains a legal conclusion to which no response is necessary.

**COUNT III: THE STATE'S VIOLATION OF THE COMPACT'S PROHIBITION AGAINST ARBITRARY ENFORCEMENT**

59. Answering Paragraph 59, the Nation incorporates its responses to Paragraphs 1 through 58 as if fully set forth herein.
60. Paragraph 60 contains a legal conclusion to which no response is necessary. To the extent a response is required, the Nation affirmatively alleges that the Stockbridge Compact speaks for itself and denies any characterization of the Stockbridge Compact that is inconsistent with its terms. The Nation denies any remaining allegations contained in Paragraph 60.
61. Answering Paragraph 61, the Nation lacks sufficient knowledge or information to respond to the allegations contained in Paragraph 61 and therefore denies the same.
62. Answering Paragraph 62, the Nation lacks sufficient knowledge or information to respond to the allegations contained in Paragraph 62 and therefore denies the same.
63. Paragraph 63 is too vague to allow the Nation to answer, the Nation lacks sufficient knowledge or information to respond to the allegations contained in Paragraph 63 and therefore denies the same. Further, the Nation affirmatively alleges that it is in full compliance with the terms of the Ho-Chunk Compact.
64. Answering Paragraph 64, denies. Further, the Nation affirmatively alleges that it is in full compliance with the terms of the Ho-Chunk Compact.

**COUNT IV: HO-CHUNK'S VIOLATION OF ITS OWN CLASS III GAMING COMPACT AND IGRA'S INDIAN LANDS RESTRICTIONS**

65. Answering Paragraph 65, the Nation incorporates its responses to Paragraphs 1 through 64 as if fully set forth herein.

66. Answering Paragraph 66, denies.
67. Answering Paragraph 67, denies. Further, the Nation affirmatively alleges that the Wittenberg Parcel has been held by the United States in trust for the Ho-Chunk Nation since 1969.
68. Paragraph 68 contains a legal conclusion to which no response is necessary.
69. Answering Paragraph 69, denies.
70. Answering Paragraph 70, denies.
71. Answering Paragraph 71, denies.

**COUNT VI<sup>[1]</sup>: HO-CHUNK’S VIOLATION OF THE “ANCILLARY FACILITY” RESTRICTIONS IN ITS COMPACT**

72. Answering Paragraph 72, the Nation incorporates its responses to Paragraphs 1 through 71 as if fully set forth herein.
73. Paragraph 73 contains a legal conclusion to which no response is necessary. To the extent a response is required, the Nation affirmatively alleges that the Ho-Chunk Compact speaks for itself and denies any characterization of the Ho-Chunk Compact that is inconsistent with its terms.
74. Paragraph 74 contains a legal conclusion to which no response is necessary. To the extent a response is required, the Nation affirmatively alleges that the Ho-Chunk Compact speaks for itself and denies any characterization of the Ho-Chunk Compact that is inconsistent with its terms.
75. Answering Paragraph 75, the Nation denies that the Wittenberg Ancillary Facility presently includes 502 slot machines. Further, the Nation affirmatively alleges

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<sup>1</sup> There is no “COUNT V” contained in Plaintiff’s Complaint. Rather, the Complaint skips from “COUNT IV” to “COUNT VI.”

that the Wittenberg Ancillary Facility includes 509 such devices. The Nation admits the remaining allegations of Paragraph 75.

76. Answering Paragraph 76, the Nation denies that, in expanding the Wittenberg Parcel, the Ancillary Facility will include 800 slot machines and 10 table games. The Nation affirmatively alleges that the Ancillary Facility will include 823 slot machines and no table games. The Nation admits the remaining allegations of Paragraph 76.
77. Paragraph 77 contains a legal conclusion to which no response is necessary. To the extent a response is required, Paragraph 77 is too vague to permit the Nation to answer, and therefore, the Nation denies the allegations in Paragraph 77.
78. Answering Paragraph 78, denies.
79. Paragraph 79 contains a legal conclusion to which no response is necessary. To the extent a response is required, denies.
80. Paragraph 80 contains a legal conclusion to which no response is necessary. To the extent a response is required, denies. Further, the Nation affirmatively alleges that the allegations contained in Paragraph 80 rest on an incorrect interpretation of the Ho-Chunk Compact advanced by Plaintiff. The Nation is in full compliance with the terms of the Ho-Chunk Compact.
81. Paragraph 81 contains a legal conclusion to which no response is necessary. To the extent a response is required, denies. Further, the Nation affirmatively alleges that the allegations contained in Paragraph 81 rest on an incorrect interpretation of the Ho-Chunk Compact advanced by Plaintiff. The Nation is in full compliance with the terms of the Ho-Chunk Compact.

**AFFIRMATIVE DEFENSES**

1. Plaintiff has failed to state a claim upon which relief may be granted.
2. Plaintiff's claims are barred because the Court lacks subject matter jurisdiction to adjudicate the dispute.
3. One or more of Plaintiff's claims are barred by the applicable statute(s) of limitations.
4. One or more of Plaintiff's claims are barred by the equitable doctrines of laches, waiver, and/or estoppel.
5. Plaintiff's claims against the Nation are barred by the doctrine of Tribal Sovereign Immunity and, accordingly, this Court lacks personal jurisdiction over the Nation.
6. Plaintiff lacks standing to bring suit against the Nation.
7. Plaintiff may have failed to join one or more indispensable parties.
8. One or more of Plaintiff's claims are barred by the Indian Nonintercourse Act, 25 U.S.C. § 177.
9. Plaintiff has failed to mitigate its damages, if any.
10. Plaintiff's claims are barred by the equitable doctrine of Acquiescence.
11. Plaintiff's claims are barred by Plaintiff's failure to exhaust administrative remedies.
12. The Nation reserves the right to assert additional defenses that are revealed by further investigation and discovery.

Dated: May 18, 2017

Respectfully Submitted,

*s/ Jordan C. Corning*

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