

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and among the Nanticoke Lenne-Lenape Tribal Nation (“Plaintiff” or “Tribe”) and Gurbir S. Grewal, Attorney General of New Jersey, in his official capacity (“Defendant” or “Attorney General”) (together, the “Parties”) through their authorized representatives. This Agreement relates to the litigation in the United States District Court, District of New Jersey, captioned *Nanticoke Lenne-Lenape Tribal Nation v. Gurbir S. Grewal, Attorney General of New Jersey, in His Official Capacity*, Civil Action No. 15-cv-5645-RMB-JS, and the litigation in the Superior Court of New Jersey, Law Division, Mercer County, captioned *Nanticoke Lenne-Lenape Tribal Nation v. Christopher S. Porrino, Attorney General of New Jersey, in His individual and official capacities*, Docket No. L-2343-15.

RECITALS

Federal Litigation

A. On or about July 20, 2015, the Tribe filed suit in the United States District Court, District of New Jersey, Civil Action No. 15-cv-5645-RMB-JS (“Federal Litigation”).

B. In its complaint, the Tribe alleged that Defendant is violating the Tribe’s rights under the United States Constitution to: (1) procedural due process; (2) substantive due process; and (3) equal protection.

C. On or about May 6, 2016, the Tribe filed a Second Amended Complaint.

D. On or about May 24, 2016, Defendant filed a motion to dismiss the Second Amended Complaint.

E. By order dated October 27, 2016, the U.S. District Court denied Defendant’s motion with respect to the Tribe’s procedural due process and equal protection claims, allowing them to proceed, and granted Defendant’s motion for dismissal of the Tribe’s substantive due process claim.

F. Defendant then answered Plaintiff’s Second Amended Complaint, in which he denied liability and asserted various defenses to Plaintiff’s allegations.

G. On or about April 13, 2018, the Tribe filed a Motion for Summary Judgment. Defendant filed his opposition. The motion is pending before the U.S. District Court.

State Litigation

H. On October 18, 2015, the Tribe filed a five-count complaint in the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-2343-15 (“State Litigation”).

I. In the State Litigation, the Tribe alleges deprivation of its rights under the New Jersey State Constitution to: (1) procedural due process; (2) substantive due process; and (3)

equal protection. In the State Litigation, the Tribe also asserts the following two State common law claims: (4) equitable estoppel; and (5) arbitrary and capricious action.

J. On or about December 23, 2015, Defendant filed a motion to dismiss the Tribe's State Litigation in its entirety.

K. By order dated March 9, 2016, the Superior Court, Law Division, granted the Attorney General's motion.

L. On or about March 22, 2016, the Tribe filed a notice of appeal of the Superior Court's decision.

M. By order dated July 10, 2017, the Superior Court of New Jersey, Appellate Division, reversed the Superior Court's decision and remanded the Tribe's five counts in the State Litigation to the trial court (Docket No. A-2756-15T1).

N. Defendant answered the Tribe's complaint in the State Litigation, in which he denied liability and asserted various defenses to the Tribe's allegations.

The Tribe's Allegations

O. Plaintiff alleges that it is an American Indian tribe — an organization of American Indians of related tribal heritage, having been united in a community under one leadership or government, and residing in and around Salem and Cumberland counties in Southern New Jersey since at least the 19th century, with the power to negotiate with other governments.

P. Plaintiff alleges that New Jersey has officially and formally recognized the Tribe through multiple valid methods that have, in the context of state tribal recognition practices, the force of law, including concurrent resolutions of the state legislature, statutes granting the Tribe certain rights and privileges because of its status, official communications between state officials and federal officials, and more than three decades of treatment of the Tribe as state-recognized in the normal course of state business.

Q. Plaintiff sought, among other relief, an order declaring, pursuant to 28 U.S.C. § 2201, that New Jersey has officially and formally recognized the Tribe as an American Indian tribe; an order enjoining and estopping Defendant and his successors, officers, agents, servants, and employees from denying, repudiating, or otherwise impairing the Tribe's state-recognized status; an order declaring that Defendant's actions violate the Tribe's civil rights protected under the United States Constitution and New Jersey's State Constitution; and that Defendant's actions in denying the Tribe's state-recognized status were arbitrary, capricious, unreasonable, and otherwise contrary to law.

R. In addition, in the State Litigation, Plaintiff sought recompense for losses it alleges it has suffered because of Defendant's alleged actions. Plaintiff alleges it has suffered significant financial and other harm, including the loss of the ability to market and sell artwork

and crafts as "American Indian made" under the federal Indian Arts & Crafts Act; the loss of grants for housing, health, and human services; the loss of educational opportunities and scholarships; the loss of substantial ongoing and potential revenue by the Tribe's certified tribal companies; the loss of tribal jobs; the loss of a business line of credit; and the threat of loss of membership and standing in professional organizations.

S. Further, in both the Federal Litigation and the State Litigation, Plaintiff sought an award of attorney's fees and costs, pursuant to 42 U.S.C. § 1988 and N.J.S.A. 10:6-2(f).

The Attorney General's Response to the Tribe's Allegations

T. The Defendant has vigorously defended both the State Litigation and the Federal Litigation, and the Defendant has alleged that Plaintiff's substantive claims lack merit.

U. The Defendant also has asserted that Plaintiff is not entitled to damages, attorney's fees, or costs.

WHEREFORE, to avoid the delay, uncertainty, inconvenience, and expense of further litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties to this Agreement hereby stipulate and agree to settle the Federal Litigation and the State Litigation as follows:

TERMS AND CONDITIONS

1. Defendant acknowledges and agrees that New Jersey has officially and formally recognized Plaintiff the Nanticoke Lenni-Lenape Tribal Nation¹ as an American Indian Tribe since 1982. New Jersey officially recognized the Tribe through multiple valid processes sufficient under the federal standards to bestow federal benefits upon the Plaintiff as a formally state-recognized American Indian Tribe, including a concurrent legislative resolution, state statutes granting the Tribe certain rights and privileges with the force of law, state official communications, and treatment as state recognized by state agencies in the normal course of business.

2. For the purposes of this Agreement, "American Indian Tribe" is defined as an organization of American Indians of related tribal heritage, having been united in a community under one leadership or government, with the power to negotiate with other governments, and inhabiting a particular territory

3. Defendant agrees that New Jersey intends such recognition to qualify the Tribe for all federal and state benefits, services, and privileges for which state-recognized tribes are eligible, including, for example, all privileges provided by the Indian Arts and Crafts Act of 1990.

¹ Also referred to in public documents in prior decades as the "Confederation of Nanticoke-Lenape Tribes" and the "Nanticoke-Lenape Indians of New Jersey".

4. Defendant hereby revokes any prior communications sent by him, his predecessors, agents, and employees, denying that New Jersey has recognized the Tribe.

5. Defendant, his successors, officers, agents, representatives, and employees will not deny that the Tribe has been recognized as an American Indian tribe by the State of New Jersey.

6. Defendant, in cooperation with the Tribe, will, within thirty (30) days of the Effective Date (defined below) of this Agreement, communicate to all relevant federal and state agencies, as identified by the Tribe, the recognition status of the Tribe, as described in Paragraphs 1-4 of this Agreement, and utilizing the language set forth in Exhibit A hereto.

7. Upon Defendant's receipt of inquiries from any source regarding the recognition status of the Tribe, Defendant will respond with a letter as forth in Exhibit A, and, if necessary, will consult and coordinate with the Tribe and with the members of the New Jersey Commission on American Indian Affairs ("Commission"), and will copy the Commission and the Tribe on all related correspondence.

8. The Tribe assumes all risk that federal agencies will reject the substance of this Agreement as sufficient to restore the Tribe's eligibility for federal benefits or services.

9. The Parties acknowledge that the acceptance by the federal government of states' use of concurrent legislative resolutions to officially and formally recognize tribes does not affect limitations that may be placed by New Jersey on the use of concurrent legislative resolutions for purposes other than tribal recognition.

10. The parties agree that State recognition does not provide the Tribe with federal casino gaming rights. Plaintiff agrees to make no claim in any forum that State recognition entitles Plaintiff to federal rights to conduct gaming in New Jersey.

11. Plaintiff disclaims any interest in casino gaming rights.

12. Within ninety (90) calendar days of the Effective Date of this Agreement, Defendant will make a payment to Plaintiff in the amount of two million four hundred thousand dollars and no cents (\$2,400,000), directed as follows:

Union Bank and Trust
Cultural Heritage Partners, PLLC
IOLTA Account
Account Number: 8511655642
Routing Number: 051403164

13. Within thirty (30) calendar days of the Effective Date, Plaintiff shall request that the United States District Court, District of New Jersey, and the Superior Court of New Jersey enter appropriate orders of dismissal with prejudice and without costs.

14. Nothing in this Agreement shall constitute an admission of liability, duty, or wrongdoing by any party or an admission that any other statute, law, or any policy, practice, or procedure of the State of New Jersey, including the Defendant, its officers, officials, employees, agents, or servants, at any time or in any way violated federal, New Jersey, or any other law. Defendant waives no defense and concedes no position that it has taken in the Federal Litigation or the State Litigation.

15. Should any party seek to enforce or pursue remedies for breach of this Agreement, the parties agree to submit such claims to the jurisdiction of the New Jersey Superior Court, Mercer County.

16. If any provision of this Agreement or the application thereof to any person or circumstance, to any extent, is held to be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

17. Other than any action or proceeding necessary to enforce the terms of this Agreement, as described in Paragraph 15 above, the Tribe covenants not to sue the Defendant for any cause of action arising out of, or relating to, the recognition status of the Tribe, as described in Paragraph 1 of this Agreement.

18. As of the Effective Date, the Tribe hereby completely releases, acquits, and forever discharges the Defendant, the State, including all State departments, agencies, divisions, and offices, and all of their respective agents, directors, officers, employees, subsidiaries, assigns, and successors, from any and all claims or liability that were or could have been asserted in the Federal Litigation or the State Litigation, including all claims relating to Plaintiff's recognition status and the alleged rescinding thereof, other than for violation of the terms of this Agreement or to enforce the terms of the courts' orders.

19. The Tribe understands that prior to payment of the agreed upon settlement, the Defendant reserves the right to conduct a lien search of any debt/lien owed by the Tribe to the State of New Jersey, its agencies or departments. The Tribe agrees that if, upon the results of any lien search conducted by the Defendant, a debt/lien is found to be owed to the State, its agencies or departments, such debt/lien shall be deducted from the settlement payment prior to its disbursement to the Tribe and be used to satisfy the debt/lien.

20. In the event of an action or proceeding to enforce the terms of this Agreement, as set forth in Paragraph 15, the prevailing party in that action shall have the right to seek from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this Agreement.

21. The Parties acknowledge that in executing this Agreement, they have carefully reviewed and had the opportunity to review the terms of this Agreement, with counsel of their choice and are fully aware of the extent of their rights and obligations. The Parties further agree

that the language of this Agreement shall not be construed presumptively against any of the Parties to this Agreement.

22. The Parties hereby waive all rights to appeal or challenge the validity of this Agreement, except that the Parties do not waive their right to bring a legal action to enforce compliance with the terms herein or to enforce the terms of the courts' orders.

23. This Agreement represents the entire integrated agreement between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may only be modified by written agreement signed by the Parties.

24. This Agreement shall be governed and interpreted under the laws of the State of New Jersey, without regard to conflict-of-laws principles.

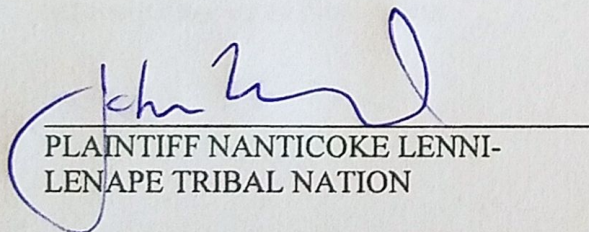
25. This Agreement applies to, and is binding upon, the Parties, and their respective agents, directors, officers, employees, subsidiaries, assigns, and successors.

26. Each undersigned representative of the Parties to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement, and to execute and legally bind each such Party to this Agreement.

27. This Agreement may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Agreement.

28. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date").

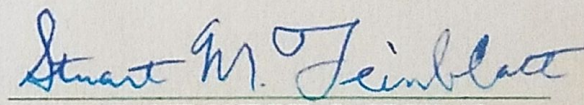
PLAINTIFF


PLAINTIFF NANTICOKE LENNI-
LENAPE TRIBAL NATION

By: Pastor John Norwood, in his official
capacity for the Tribe

Dated: November 15, 2018

DEFENDANT


DEFENDANT GURBIR S. GREWAL,
ATTORNEY GENERAL OF NEW
JERSEY, IN HIS OFFICIAL CAPACITY

By: Stuart M. Feinblatt
Assistant Attorney General of New Jersey
Dated: November 15, 2018

EXHIBIT A

Body Text of Letters to be Sent to Relevant Federal and State Agencies

[On NJ Attorney General Letterhead]

Please be advised that the State of New Jersey has officially and formally recognized the Nanticoke Lenni-Lenape Tribal Nation as an American Indian Tribe since 1982.

New Jersey officially recognized the Tribe through multiple valid processes sufficient under the federal standards to bestow federal benefits upon the Plaintiff as a formally state-recognized American Indian Tribe, including a concurrent legislative resolution, state statutes granting the Tribe certain rights and privileges with the force of law, state official communications, and treatment as state recognized by state agencies in the normal course of business.

For the purposes of this letter, "American Indian Tribe" is defined as an organization of American Indians of related tribal heritage, having been united in a community under one leadership or government, with the power to negotiate with other governments, and inhabiting a particular territory.

New Jersey intends such recognition to qualify the Tribe for all federal and state benefits, services, and privileges for which state-recognized tribes are eligible, including all privileges provided by the Indian Arts and Crafts Act of 1990.

The New Jersey Office of the Attorney General has revoked any prior communications sent by this office, including predecessors in this office, agents, and employees, denying that New Jersey has recognized the Tribe.

/Signed/
Gurbir S. Grewal
Attorney General of New Jersey