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CHRIS DEROSE
Clerk of the Superior Court
By Angus McLoone, Deputy
Date 08/13/2018 Time 15:29:26

Description	Amount
----- CASE# CV2018-010693 -----	
CIVIL NEW COMPLAINT	333.00
TOTAL AMOUNT	333.00

Receipt# 26749028

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LYNXX GAMING, INC., an Arizona corporation, AMERICAN LEGION POST NO. 1, an Arizona non-profit corporation, and CAROL J. MEYER, an individual,

Plaintiffs,

v.

STATE OF ARIZONA, DAVID BRIANT, in his official capacity as Director of the Arizona Department of Revenue, DAN BERGIN, in his official capacity as Director of the Arizona Department of Gaming, and JOHN COCCA, in his official capacity as Director of the Arizona Department of Liquor Licenses and Control,

Defendants.

No. CV 2018-010693

VERIFIED COMPLAINT

For their complaint, Plaintiffs Lynxx Gaming, Inc. ("Lynxx"), American Legion Post No. 1, ("American Legion"), and Carol J. Meyer, (Meyer), allege as follows:

1. At all times material to this action, Lynxx is and has been a corporation duly organized under Arizona law, properly authorized and legally qualified to do business in the State of Arizona, in good standing with the Arizona Corporation

1 Commission, and with its headquarters located at Tempe, Arizona. Lynxx is ready,
2 willing, able, and wants to conduct legal bingo operations in Arizona.

3 2. At all times material to this action, Plaintiff American Legion is and has
4 been a non-profit corporation duly organized under Arizona law, properly authorized and
5 legally qualified to do business in the State of Arizona, in good standing with the Arizona
6 Corporation Commission, and with its headquarters located at Phoenix, Arizona.
7 American Legion is ready, willing, able, and wants to contract with Lynxx to operate
8 bingo games on its behalf in Arizona.

9 3. Plaintiff Meyer is an individual who currently resides in Simi Valley,
10 California. A motor vehicle accident caused Ms. Meyer to suffer a severe injury to her
11 spine, leaving her a quadriplegic, with only limited use of arms and hands, and so little
12 use of her legs that she cannot walk or transfer and has to use a lift. Meyer is ready,
13 willing, able, and wants to be employed by Lynxx to conduct bingo games in Arizona.

14 4. Ms. Meyer's use of her arms and hands is so limited that she cannot
15 manipulate physical bingo balls. Not only can she not remove balls from a receptacle, she
16 cannot press balls onto rails and activate a micro-switch so a number corresponding to
17 the number on the ball is illuminated on a board.

18 5. Ms. Meyer is a qualified individual with a disability entitled to the
19 protections provided by the Americans with Disabilities Act ("ADA"), and Arizona's
20 analogue to the ADA, the Arizona Civil Rights Act ("ACRA") set forth in A.R.S. §§ 41-
21 1461 through 41-1468.

22 6. Defendant State of Arizona is a sovereign state admitted to the union by
23 means of the Enabling Act, §§ 19-35, approved June 20, 1910 (c. 310, 36 Stat. 557, 568-
24 79).

25 7. Defendant David Briant currently serves as the duly appointed Director of
26 the Arizona Department of Revenue ("Revenue Department") and is named herein in his

1 official capacity. The Revenue Department is a department of the State of Arizona
2 created by A.R.S. § 42-1002, which also creates the office of Director of the Revenue
3 Department. A.R.S. § 5-402 appoints the Revenue Department as the licensing authority
4 “in charge of enforcement of the terms and provisions” of art. 1, ch. 4, title 5, A.R.S.,
5 relative to bingo in the State of Arizona. The powers and duties of the Revenue
6 Department and its Director are generally set forth in Title 42, A.R.S.

7 8. Defendant Dan Bergin currently serves as the duly appointed Director of
8 the Arizona Department of Gaming (“Gaming Department”). The Gaming Department
9 is a department of the State of Arizona created by A.R.S. § 5-604, which also creates the
10 office of Director of the Gaming Department. The powers and duties of the Gaming
11 Department and its Director are generally set forth in Title 5, A.R.S. The Gaming
12 Department and its Director have no authority over bingo in Arizona, the regulation of
13 which is vested entirely in the Revenue Department by A.R.S. § 5-402.

14 9. Defendant John Cocca currently serves as the duly appointed Director of
15 the Arizona Department of Liquor Licenses and Control (“Liquor Department”). The
16 Liquor Department is a department of the State of Arizona created by A.R.S. § 4-111,
17 which also creates the office of Director of the Liquor Department. The powers and duties
18 of the Liquor Department and its Director are generally set forth in Title 4, A.R.S.

19 10. This Court has subject-matter jurisdiction of this action pursuant to
20 ARIZ.CONST. art. 6, § 14, and A.R.S. §§ 12-123, 12-1801 through 12-1808, 12-1831
21 through 12-1846, and 41-1463.

22 11. Venue is proper in Maricopa County under A.R.S. § 12-401.

23 12. At its first general session, the 53d Legislature passed SB 1180, the
24 Governor signed the bill, and it is chaptered at 2017 ARIZ.SESS.LAWS Ch. 240 (53d Leg.,
25 1st Reg. Sess.) Among other things, SB 1180 (a) amended A.R.S. § 5-406 to allow
26 contractors to participate in or operate a bingo game and allows the use in Arizona of

1 “technological aids for bingo games that function only as electronic substitutes for bingo
2 cards” (“BTAs”), (b) permits a contractor to provide such BTAs to a bingo licensee, and
3 (c) permits a contractor to employ its personnel to operate BTAs for the purpose of
4 assisting persons with disabilities, as provided in A.R.S. § 5-406(Y).

5 13. Lynxx manufactures and supplies bingo technological aids (“BTAs”) and
6 supplies, sells and leases equipment essential to the operation, conduct and playing of
7 bingo, as provided in A.R.S. § 5-401(7).

8 14. Anticipating that SB 1180 would become law on the 91st day following
9 adjournment *sine die* of the 53d Legislature’s first regular session, Lynxx met with the
10 Gaming Department on or about July 13, 2017, to obtain guidance on what SB 1180
11 allowed and what it did not allow for equipment manufactured to function as a BTA. As
12 a result of that meeting, Adrian Fleming contacted Greg Mullally, the President of Lynxx,
13 by e-mail, stating that the Gaming Department could not give specific letters of approval.

14 15. On August 9, 2017, the Arizona Department of Gaming published a Notice
15 to Bingo Licensees regarding SB 1180. In that letter, the Department stated “If you have
16 any question about whether the technological aid you are considering properly qualifies
17 as an electronic substitute for a bingo card, please contact the Arizona Department of
18 Gaming for further guidance.”

19 16. Between Lynxx’s initial contact with the Gaming Department on July 13,
20 2017, and February 21, 2018, the Gaming Department failed or refused to provide any
21 guidance to Lynxx despite repeated telephone calls, e-mails and registered letters to the
22 Department from Lynxx requesting that they do so.

23 17. On or before January 15, 2018, Lynxx supplied BTAs and the equipment
24 necessary to conduct a bingo game utilizing those BTAs to VFW Post 6306 (“Post 6306”)
25 located at Topock, Arizona.
26

1 25. Each of the following grounds that were published by the Gaming
2 Department at that meeting, in fact and in law, does not constitute a violation of Arizona
3 law or administrative regulation, and Plaintiffs are entitled to judgment so declaring. The
4 following paragraphs state the interpretations published by the Gaming Department at
5 that meeting and why they fail as a matter of law:

6 26. Ownership of the equipment: Contrary to the Gaming Department's
7 interpretation, A.R.S. § 5-406(E), as amended by SB 1180, specifically exempts BTAs
8 from the requirement that a bingo licensee own the BTAs.

9 27. Frequency of use per week: Contrary to the Gaming Department's
10 interpretation, A.R.S. § 5-406(G) provides: "A licensee shall not conduct or operate more
11 than five occasions of bingo during any calendar week. Not more than twelve hours of
12 bingo shall be conducted in any building or on any premises during any calendar day."
13 This provision applies to the licensee, and nothing inherent in Lynxx's BTAs precludes a
14 licensee from complying with this frequency limitation. At any rate, Lynxx's BTAs can
15 be programmed to preclude any violation of this frequency limitation.

16 28. Multiple games per location: Contrary to the Gaming Department's
17 interpretation, and recurring to the definitions of the terms "occasion" and "premises" set
18 forth in A.R.S. § 5-401, and the Revenue Department's rules regulating bingo play, as
19 set forth in A.A.C. §§ 15-7-201 through 15-7-234, neither Arizona law nor the Revenue
20 Department's regulations preclude more than one game of bingo from taking place
21 simultaneously on a licensee's premises during the five occasions per week permitted by
22 A.R.S. § 5-406(G).

23 29. Currency acceptance: Revenue Department Rule R15-7-215(A) provides
24 as follows:

25 A. A licensee shall sell bingo cards on the premises where the game of
26 bingo is to be played.

1 B. A licensee shall not reserve cards for a player.
2 Contrary to the Gaming Department's interpretation, Lynxx's BTAs satisfy this
3 requirement. The player deposits funds on the premises and the player is given an
4 identification card to access the funds.

5 30. Despite Lynxx's demand therefor, the Gaming Department has failed and
6 refused to retract its interpretations that the conduct or conditions, alleged in paragraphs
7 26-29, violate Arizona law or regulations relating to bingo and has threatened
8 enforcement and continues to threaten enforcement of its interpretations of Arizona bingo
9 laws and regulations to prohibit the conduct or conditions alleged in such paragraphs.

10 31. The Gaming Department's continuing refusal to retract such interpretations
11 and threatened enforcement of them has injured and continues to injure Plaintiffs and has
12 caused and continues to cause Plaintiffs irreparable injuries.

13 32. The enforcement actions taken against Post 6306 indicate that Defendants
14 or each of them will immediately enforce the Gaming Department's foregoing erroneous
15 interpretations against Plaintiffs should Plaintiffs or any of them commence operations
16 of Lynxx's BTAs in Arizona.

17 33. Damages make an inadequate remedy for the injuries Defendants have
18 caused and continue to cause Plaintiffs, and Plaintiffs lack an adequate remedy at law.

19 34. Because this is a "civil action brought by [a] party to challenge a rule,
20 decision, guideline, enforcement policy or procedure of a state agency or commission
21 that is statutorily exempt from the rulemaking requirements of title 41, chapter 6 on the
22 grounds that the rule, decision, guideline, enforcement policy or procedure is not
23 authorized by statute or violates the Constitution of the United States or this state,"
24 Plaintiffs are entitled to an award of reasonable attorneys' fees and other expenses,
25 including expert witness fees, pursuant to A.R.S. § 12-348(A)(7).

26 35. Plaintiffs are entitled to an award of costs pursuant to A.R.S. § 12-341.

1 numbers by utilizing a computerized ball draw device. Such equipment is analogous to
2 the computerized ball draw adopted by the Arizona Lottery in 2005 to generate random
3 lottery numbers replacing their manual bingo ball draw device.

4 42. Under the circumstances, Lynxx's bingo equipment and BTAs constitute a
5 reasonable accommodation to Lynxx applicants for hire, employees, and customers, and
6 Plaintiffs are entitled to judgment so declaring and to a preliminary and permanent
7 injunction prohibiting Defendants from taking any action to prevent Lynxx's efforts to
8 comply with the ADA and ACRA and its lawful use of the bingo equipment or BTAs in
9 Arizona, any Arizona law or regulation to the contrary notwithstanding.

10 43. Plaintiffs are entitled to an award of reasonable attorneys' fees and expert
11 witness fees under the Civil Rights Attorneys' Fees Act, 42 U.S.C. § 1988; of attorneys'
12 fees, litigation expenses, and costs pursuant to the ADA, specifically 42 U.S.C. § 12205;
13 of attorneys' fees and other expenses pursuant to A.R.S. § 12-348(A)(7); and of costs
14 pursuant to A.R.S. § 12-341.

15 **THIRD CLAIM FOR RELIEF**

16 44. Plaintiffs adopt herein by reference all allegations of all preceding
17 paragraphs.

18 45. The State of Arizona, the Revenue Department, the Gaming Department,
19 and the Liquor Department are public entities as defined by Title II of the ADA and each
20 of them is subject to Title II of the ADA.

21 46. Pursuant to 42 U.S.C. § 12132, "No qualified individual with a disability
22 shall, by reason of such disability, be excluded from participation in or be denied the
23 benefits of the services, programs, or activities of a public entity, or be subjected to
24 discrimination by any such entity."

25 47. Pursuant to 28 CFR, pt. 35, app. A at 438 (1998), Title II of the ADA
26 applies to anything a public entity does.

1 48. Pursuant to Title II of the ADA, the State of Arizona, the Revenue
2 Department, the Gaming Department, and the Liquor Department are prohibited from
3 administering a licensing program in a manner that subjects qualified individuals with
4 disabilities to discrimination on the basis of disability, or establishing requirements for
5 the programs or activities of licensees or certified entities that subject qualified
6 individuals with disabilities to discrimination on the basis of disability.

7 49. A.R.S. § 5-406(S) provides "The receptacle, the person calling the numbers
8 as they are drawn and the person removing the objects or balls from the receptacle must
9 be visible to all the players at all times except where more than one room is used for any
10 one game and subsection R of this section applies."

11 50. Plaintiff Meyer is not physically capable of removing objects or balls from
12 a receptacle and, therefore, § 5-406(S) violates Title II of the ADA.

13 51. Plaintiffs are entitled to judgment so declaring and to a preliminary and
14 permanent injunction prohibiting Defendants from enforcing § 5-406(S) or from
15 enforcing any other statute or regulation that discriminates based on physical impairment.

16 52. Plaintiffs are entitled to an award of reasonable attorneys' fees and expert
17 witness fees under the Civil Rights Attorneys' Fees Act, 42 U.S.C. § 1988; of attorneys'
18 fees, litigation expenses, and costs pursuant to the ADA, specifically 42 U.S.C. § 12205;
19 of attorneys' fees and other expenses pursuant to A.R.S. § 12-348(A)(7); and of costs
20 pursuant to A.R.S. § 12-341.

21 **DEMAND FOR JUDGMENT**

22 Plaintiffs therefore respectfully demand that this Court enter judgment in their
23 favor and against Defendants and each of them granting Plaintiffs the following relief:

24 A. Declaring that none of the foregoing grounds published by the Gaming
25 Department, as set forth in paragraphs 26 through 29, constitutes a violation of Arizona
26 law or regulations;

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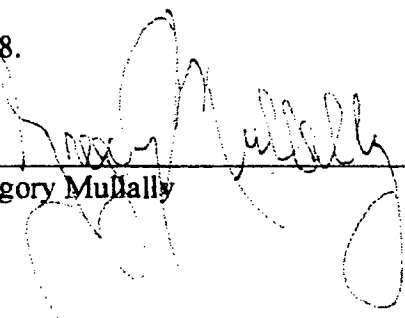
VERIFICATION

I, Gregory Mullally, President of Lynxx Gaming, Inc., do state and swear under penalty of perjury and as permitted by Rule 8(h), Ariz.R.Civ.P., as follows:

I have read the foregoing Verified Complaint and, to the best of my knowledge, information and belief, the statements made therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of August, 2018.



Gregory Mullally