

No. C098204

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT, DIVISION ONE

YAVAPAI-APACHE NATION, a federally recognized Indian tribe,
Plaintiff and Respondent,

v.

LA POSTA BAND OF DIEGUENO MISSION INDIANS, a federally
recognized Indian tribe,

Defendant and Appellant;

CALIFORNIA GAMBLING CONTROL COMMISSION,

Defendant and Respondent.

Appeal from Sacramento County Superior Court, Case No.
34-2018-00238711-CU-MC-GDS

The Honorable Richard K. Sueyoshi, Judge

**RESPONDENT CALIFORNIA GAMBLING CONTROL
COMMISSION'S BRIEF**

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

Case Name: *YAVAPAI-APACHE NATION, , a federally recognized Indian tribe v. LA POSTA BAND OF DIEGUENO MISSION INDIANS, a federally recognized Indian tribe* Court of Appeal No.: C098204

CERTIFICATE OF INTERESTED PARTIES OR ENTITIES OR PERSONS
(Cal. Rules of Court, Rule 8.208)

(Check One) **INITIAL CERTIFICATE** **SUPPLEMENTAL CERTIFICATE**

Please check the applicable box:

- There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 8.208(d).
- Interested entities or persons are listed below:

Full Name of Interested Entity or Party	Party	Non-Party	Nature of Interest
	<i>Check One</i>		<i>(Explain)</i>
	<input type="checkbox"/>	<input type="checkbox"/>	

The undersigned certifies that the above listed persons or entities (corporations, partnerships, firms or any other association, but not including government entities or their agencies), have either (i) an ownership interest of 10 percent or more in the party if an entity; or (ii) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

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Party Represented
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Jeremy Stevens Digitally signed by Jeremy Stevens
Date: 2023.09.08 10:21:15 -07'00'

September 8, 2023

(Signature of Attorney Submitting Form)

(Date)

This case involves Respondent Yavapai-Apache Nation’s (YAN) efforts to divert Revenue Sharing Trust Fund (RSTF) payments that the California Gambling Control Commission (Commission) has allocated and withheld for the benefit of Appellant La Posta Band of Diegueno Mission Indians (La Posta) pursuant to a tribal-state class III gaming compact (Compact) California has entered into with La Posta¹. (See Gov. Code, § 12012.35, subd. (a).) YAN seeks a declaration from the trial court that the Commission “is obligated to pay to [YAN] all RSTF distributions that would otherwise be received by La Posta . . . through such time as the [debt] is satisfied, all of which payments Plaintiff shall apply to the satisfaction of the [debt] and its accrued interest.” (AA 1253, p. 6:13-16.)

The RSTF contains funds contributed by Indian tribes operating Las Vegas-type casinos within the territorial boundaries of the State of California pursuant to tribal-state class III gaming compacts. The Commission administers the RSTF, as trustee, for the purpose of depositing and disbursing the funds on a quarterly basis to eligible tribes. (*Cal. Valley Miwok Tribe v. Cal. Gambling Control Com.* (2014) 231

¹ See AA 0002, “Rule 8.124(b)(2) allows the record from the prior appeal in this matter, *Yavapai-Apache Nation v. La Posta Band of Diegueno Mission Indians*, Appeal No. C0911801 [sic] (opinion filed 4/6/2022), to be fully incorporated here by reference.” The “C091180” appearing in this quotation is apparently a scrivener’s error; the correct case number for the appeal cited therein is C091801. The Compact is part of the record of that prior appeal in which it is marked as LP2096-LP2262.

Cal.App.4th 885, 889; Compact, section 4.3.2(a)(ii) (LP2205).) Aside from its duty to administer the RSTF, the Commission has no discretion with respect to the use or disbursement of RSTF monies. (*Cal. Valley Miwok Tribe v. Cal. Gambling Control Com., supra*, 231 Cal.App.4th at 889; Compact, section 4.3.2.1(b)² (LP2205)). The Commission has no authority to make independent determinations on the merits of inter-tribal contractual disputes. (See *Cal. Valley Miwok Tribe v. Cal. Gambling Control Com., supra*, 231 Cal.App.4th at 905-907 [discussing the Commission’s authority in respect of the RSTF].) The Commission claims no interest in the RSTF monies that are the subject underlying this controversy, and takes no position regarding the merits of the claims advanced by YAN and La Posta.

Recognizing the Commission’s nominal participation in the underlying controversy, the parties stipulated, and the superior court ordered, that the Commission “is declared a nominal defendant” in this controversy, and “[u]nless ordered to do so by the [superior court], the Commission is relieved from the requirement to continue active participation in this action as a party” (LP658, p. 4:4-8.)

² “The Commission shall have no discretion with respect to the use or disbursement of the trust funds. Its sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-Compact Tribes.”

The Commission respectfully provides this respondent's brief³ without taking a position in the appeal because the superior court has ordered, and the parties stipulated, that the Commission is a nominal defendant in the controversy at issue and takes no position with regard to the merits of the claims advanced by La Posta and YAN.

Respectfully submitted,

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**Jeremy
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September 8, 2023

³ Although titled a respondent's brief and filed in compliance with Deputy Clerk Douthier's letter dated June 16, 2023, directing that "Respondents' briefs are due by July 13, 2023" (later extended by stipulation to September 11, 2023), this pleading is the Commission's statement of no position in this appeal for the reasons stated.

CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT CALIFORNIA GAMBLING CONTROL COMMISSION'S BRIEF** uses a 13-point Century Schoolbook and contains **769** words.

ROB BONTA

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T. MICHELLE LAIRD

Acting Senior Assistant Attorney General

Jeremy

Stevens

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September 8, 2023

DECLARATION OF ELECTRONIC SERVICE

Case Name: ***Yavapai-Apache Nation v. La Posta Band,
et al.***

Case No.: **C098204**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On September 8, 2023, I electronically served the attached **RESPONDENT CALIFORNIA GAMBLING CONTROL COMMISSION'S BRIEF** by transmitting a true copy via this Court's TrueFiling system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 8, 2023, at Sacramento, California.

PAULA CORRAL

Declarant

Paula Corral

Signature

SA2023304655