3rd Civil 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

vs.

LA POSTA BAND OF DIEGUENO MISSION INDIANS,
A FEDERALLY RECOGNIZED INDIAN TRIBE

Defendant and Appellant

RESPONDENT YAVAPAI-APACHE NATION'S BRIEF

Appeal from the Superior Court for the County of Sacramento
Case No. 34-2018-00238711-CU-MC-GDS
The Honorable Richard K. Sueyoshi

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INTRODUCTION

This appeal is like an unguided missile that has veered far off course from its target. The appeal's target is an order denying a motion to enjoin a judicial proceeding in the courts of another sovereign, the Yavapai-Apache Nation. The trial court denied that motion on three separate and independent grounds: (1) the motion was moot, because the tribal court had entered final judgment by the time the trial court heard the motion; (2) the motion failed to meet the demanding standard for an antisuit injunction against the judicial proceedings of a sister state or foreign sovereign; and (3) the motion failed to meet even the standard for garden-variety preliminary injunctive relief, which generally requires a showing of irreparable injury.

Appellant La Posta Band of Diegueno Mission Indians now challenges only the third of those three grounds and presents no challenge to the first two. That point alone suffices to resolve this appeal: where a trial court bases a ruling on multiple independent grounds, failure to challenge *any one* of those grounds warrants affirmance. (See, e.g., *Briley v. City of West Covina* (2021) 66 Cal.App.5th 119, 133-34; *People v. JTH Tax, Inc.* (2013) 212 Cal.App.4th 1219, 1237.) Nor can La Posta remedy this problem in its reply brief, as its failure to address the trial court's alternative holdings in its opening brief forfeited those issues on appeal. (See, e.g., *High Sierra Rural Alliance v.*

Cnty. of Plumas (2018) 29 Cal.App.5th 102, 111 fn.2; *Christoff v. Union Pac. R.R. Co.* (2005) 134 Cal.App.4th 118, 125.)

And even if this Court were to reach the merits of the appeal, La Posta would fare no better. According to La Posta, the trial court misapplied the standard for garden-variety preliminary injunctive relief by requiring a threshold showing of irreparable injury. But the standard for a garden-variety preliminary injunction is beside the point here, because La Posta sought a very specific form of preliminary injunction—an antisuit injunction against a judicial proceeding in the courts of another sovereign, which (as La Posta itself admitted below) requires a *heightened* showing of "exceptional circumstance." (See 4 AA 788-93 (citing, *inter alia*, *Advanced Bionics Corp. v. Medtronic, Inc.* (2002) 29 Cal.4th 697, 708); 4 AA 900-03.)

And even if the legal standard for a garden-variety preliminary injunction were at issue here (which it is not), La Posta errs there too. La Posta challenges the trial court's holding that La Posta would not be entitled even to a garden-variety preliminary injunction because, as a threshold matter, it failed to show irreparable injury. La Posta insists that irreparable injury is not a "threshold" requirement for a garden-variety preliminary injunction. But it is hornbook law that irreparable injury is generally the *sine qua non* for preliminary injunctive relief. (See, e.g., *White v. Davis* (2003) 30 Cal.4th 528, 554 ("To obtain a preliminary injunction, a plaintiff ordinarily is required to

present evidence of the irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits.").) La Posta identifies no reason why the sequential *order* in which a court analyzes the factors governing preliminary injunctive relief makes a difference.

Accordingly, this appeal fails on every level, and this Court should affirm the trial court's order denying La Posta's motion for an antisuit injunction.

STATEMENT OF THE FACTS AND THE CASE

This appeal is just the latest chapter in a decade-long litigation saga between these parties. This Court recounted that factual background in its recent opinion in *Yavapai-Apache Nation v. La Posta Band of Diegueno Mission Indians* (No. C091801), 2022 WL 1025893, at *1-6 (Cal. Ct. App. Apr. 6, 2022) (unpublished) ("*La Posta II*"), and it is largely irrelevant to this appeal. Accordingly, the underlying facts will be summarized only briefly here.

In a nutshell, this dispute arises out of a 2009 agreement in which YAN loaned La Posta money for a casino. (2 AA 265-314.) The casino failed and La Posta defaulted on the loan. (1 AA 47.) The parties' loan agreement generally limits YAN's recourse against La Posta's assets to certain (worthless) casino-related assets, but this limitation does not apply "from and after the date [La Posta] commits *any act of fraud* in connection with [YAN], any obligation or any Loan Document, but only upon final

determination of such matter." (2 AA 308; emphasis added.) The parties' agreement also contemplated that litigation between them might take place in various fora, specifically (1) the federal and state courts in California, (2) La Posta's tribal court, "if ever created," and/or (3) YAN's tribal court. (*Id.*)

Shortly after the parties entered into the agreement, La Posta asked YAN to extend the time for beginning the loan repayments. (3 AA 567.) In considering that request, YAN placed great importance on La Posta's stated commitment that it had agreed to follow the recommendations of a successful casino consulting company, Strategic Development Worldwide ("SDW"), to turn around the situation. (3 AA 567-71.) After communications between the parties about La Posta's stated commitment that it had agreed to implement SDW's recommendations, YAN agreed to grant the requested extension. (See *id.*) Ultimately, however, La Posta never repaid YAN a penny of the loan, and closed the casino in 2012.

YAN sued La Posta in Superior Court in San Diego in 2013. (2 AA 315-19.) La Posta conceded that it had breached the parties' loan agreement by failing to repay YAN, but insisted that YAN's only recourse was against the worthless casino assets. (2 AA 330, 3 AA 494-95.) YAN sought to invoke the contractual fraud provision noted above, on the ground that La Posta had misrepresented its commitment to implement the casino consultant's recommendations, and thereby induced YAN to

delay loan repayments. (2 AA 348-51.) At La Posta's urging, the San Diego trial court only allowed YAN to proceed to a jury trial on a claim of *intentional* misrepresentation (as opposed to negligent misrepresentation or fraudulent concealment). (3 AA 484-85.) The jury returned a verdict in La Posta's favor on the intentional misrepresentation claim.

Accordingly, in November 2015, the San Diego trial court entered a final judgment in YAN's favor in the amount of $48,893,407.97, plus post-judgment interest at a rate of 10% per year. (3 AA 493-95.) This Court affirmed that judgment on appeal. (See *Yavapai-Apache Nation v. La Posta Band of Diegueno Mission Indians*, No. D069556, 2017 WL 2791671 (Cal. Ct. App. June 28, 2017) (unpublished) ("*La Posta I*").)

Meanwhile, in May 2015, YAN filed a complaint against La Posta in YAN tribal court alleging the negligent misrepresentation and fraudulent concealment claims that La Posta had blocked it from pursuing in the San Diego action. (See 2 AA 455-64.) The complaint also requested a declaratory judgment that, if La Posta had committed any act of fraud, YAN could attach La Posta's payments under California's Indian Gaming Revenue Sharing Trust Fund ("RSTF") to enforce payment of La Posta's debt to YAN under the judgment. (See *id.*) After holding a bench trial, the tribal court found in YAN's favor on the negligent misrepresentation claim and in La Posta's favor on the fraudulent concealment claim. It entered judgment

accordingly in March 2018. (3 AA 563-78.) The judgment did not address YAN's request for declaratory relief. Neither party appealed to the tribal appellate court.

In August 2018, YAN filed this action in Superior Court in Sacramento against both La Posta and the California Gambling Control Commission seeking to enforce the San Diego judgment against La Posta's gambling-fund revenues. (RA 6-11.) As YAN explained, the tribal court's judgment on the negligent misrepresentation claim opened the door for YAN to access those revenues because, under California law, a negligent misrepresentation qualifies as "an act of fraud." The Superior Court agreed with YAN, and entered summary judgment in YAN's favor. (See 4 AA 871-73.)

La Posta appealed, and this Court reversed—but only on a narrow, non-merits ground. (See *La Posta II*, 2022 WL 1025893.) This Court held that YAN had failed to establish that the tribal court's judgment was a "final determination" of fraud as required by the loan agreement, given that the tribal court's judgment did not resolve YAN's cause of action for declaratory relief and hence may have left open the possibility of further proceedings in tribal court. (*Id.* at *7-11.) To be clear, this Court did not purport to conclusively resolve the issue of finality, but simply held that there was enough uncertainty surrounding the issue to preclude the entry of summary judgment in YAN's favor. (*Id.* at *11.)

Following this Court's ruling in *La Posta II*, YAN returned to the tribal court in September 2022, seeking a status conference regarding further proceedings. The trial court held such a conference on October 31, 2022. (4 AA 754-55.) Despite being served, La Posta failed to appear. (*Id.*) At the hearing, YAN made clear that it intended to seek resolution of its claim for declaratory relief and the entry of a final judgment. After the hearing, the trial court entered an order establishing a briefing schedule on YAN's motion. (See *id.*)

Pursuant to that schedule, YAN filed a Motion for Entry of Final Judgment in tribal court on November 21, 2022. (4 AA 815-27.) Specifically, consistent with *La Posta II*, YAN sought an order finally adjudicating its cause of action for declaratory relief based on the tribal trial court record. (*Id.*) La Posta, however, never filed a responsive brief. Instead, La Posta sought to avoid the tribal court proceedings altogether.

On November 9, 2022, La Posta filed a motion for summary judgment in *this* proceeding. (1 AA 19-44.) And then, on December 8, 2022—some three weeks after YAN filed its motion in tribal court—La Posta filed yet another motion in *this* proceeding seeking to enjoin the tribal court proceeding altogether. (4 AA 772-95.) La Posta set that motion for hearing on February 16, 2023, and did not seek a TRO. (*See id.*)

Four days later—while that motion remained pending—La Posta submitted a letter to the tribal court attaching the

summary judgment brief that it had filed in *this* action in lieu of a responsive brief in the pending tribal court proceeding. (4 AA 918-20.) La Posta also failed to appear for the hearing in tribal court on January 26, 2023. (4 AA 880.)

On February 2, 2023, the tribal court entered a Final Judgment in YAN's favor, noting that La Posta had "failed to appear." (4 AA 879-82.) The court ruled in La Posta's favor on YAN's claim for fraudulent concealment, ruled in YAN's favor on its claim of negligent misrepresentation "based on … La Posta's misrepresentation of an existing fact," awarded stipulated damages in the amount of $282,081 on that claim, and granted declaratory relief that YAN "is entitled to collect the entirety of any judgement based on the breach of the [YAN/La Posta loan agreement] from Revenue Sharing Account Trust Funds (RSTF) otherwise due to La Posta to satisfy the judgment entered in San Diego Superior Court, Case No. 37-2013-00048045-CU-BC-CTL." (4 AA 881-82.) On February 20, 2023, La Posta appealed that judgment to the tribal Court of Appeals. (8 AA 1434-66.)

Meanwhile, on February 16, 2023, two weeks after entry of the now truly Final Judgment, the Superior Court in this case denied La Posta's motion for an antisuit injunction. It did so on three separate and independent grounds. (5 AA 983-88.)

First, the court held that the motion was moot because "the very event which La Posta sought to have this Court enjoin … has now occurred"—entry of a final judgment in the tribal court.

(5 AA 984.) "This Court cannot enjoin YAN from obtaining a final judgment from Tribal Court which it has already obtained."[1] (*Id.*)

Second, the court held that "La Posta has failed entirely to demonstrate the exceptional circumstance necessary for an antisuit injunction." (5 AA 985-86, citing, *inter alia*, *Advanced Bionics*, *supra*, 29 Cal.4th at 708). It noted that, "[t]ellingly, La Posta has not cited a single binding California case in which such an injunction was granted." (*Id.*)[2] And *third*, the court held that

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[1] This conclusion, in addition to being intuitively obvious, is mandated by California case law. (E.g., *Disenhouse v. Peevey* (2014) 226 Cal.App.4th 1096, 1103 (application to enjoin a meeting that has already occurred is moot).) As explained in *McManus v. KPAL Broadcasting Corp.* (1960) 182 Cal.App.2d 558, 563-64, which *reversed* an injunction restraining construction of a radio transmitting tower that already had been constructed: ("Obviously, a completed wrong cannot be corrected by a preliminary injunction, the purpose of which is to preserve the status quo until after final judgment, …. Thus, an injunction will not be granted to restrain the destruction of a ditch already destroyed, or to prevent the opening of a street already opened, or to prohibit the erection of a building previously built.") *Id.* at 563.

[2] Equally telling, each of the cases La Posta cited to the court below to support its request (see 4 AA 788-90) rejected calls for antisuit injunctions, finding no "exceptional circumstance" justifying interference with the judicial proceedings of a sister state or sovereign nation. (See *Biosense Webster, Inc. v. Super. Ct.* (*Dowell*) (2006) 135 Cal.App.4th 827, 836-37 (such an injunction requires an "exceptional circumstance that outweighs the threat to judicial restraint and comity principles"); *Advanced*

it "would also deny the motion even under traditional standards governing preliminary injunctions" because La Posta failed to establish irreparable injury given that it "will be able to argue the impact, or lack thereof, of the Tribal Court final judgment" in a subsequent enforcement proceeding in California court. (5 AA 986-87.) "Given the lack of irreparable harm, the motion is denied even under traditional preliminary injunction standards," and "[t]he Court need not consider whether La Posta has shown a likelihood of prevailing." (*Id.*)

On February 28, 2023, La Posta noticed this appeal from the trial court's denial of its motion for an antisuit injunction. (5 AA 1002, 1006-07.). On June 6, 2023, La Posta filed a petition for writ of supersedeas, asking this Court to stay the Sacramento action pending this appeal. (RA 165-188.) This Court denied the writ on June 30, 2023. (RA 190-192.)

STANDARD OF REVIEW

As a general rule, "a superior court's ruling on an application for a preliminary injunction is reviewed for an abuse of discretion." (*Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 738-39; see also *Continental Baking Co. v.*

Bionics Corp. v. Medtronic, Inc. (2002) 29 Cal.4th 697, 706 ("The significant principles of judicial restraint and comity inform that we should use that power sparingly."); *TSMC North Am. v. Semiconductor Mfg. Int'l Corp.* (2002) 161 Cal.App.4th 581, 589-90.)

Katz (1968) 68 Cal.2d 512, 527 (grant or denial of a preliminary injunction "may not be interfered with on appeal, except for an abuse of discretion."). "[T]he burden rests with the party challenging the injunction to make a clear showing of an abuse of discretion." (*IT Corp. v. Cnty. of Imperial* (1983) 35 Cal.3d 63, 69; see also *Smith*, *supra*, 182 Cal.App.4th at 739 ("The party challenging the superior court's order has the burden of making a clear showing of such an abuse.").)

Recognizing it cannot establish an abuse of discretion, La Posta engages in mental gymnastics to instead argue for *de novo* review. It first notes that the standard of review depends on the basis for the lower court's denial. (AOB 21.) Fair enough. But the denial of a preliminary injunction is reviewed de novo if (and only if) the denial "depends upon a question of law." (*Strategix, Ltd. v. Infocrossing West, Inc.* (2006) 142 Cal.App.4th 1068, 1072, internal citations omitted.) Such review is appropriate here, La Posta paradoxically contends, because "[t]he Superior Court *failed to consider* the likelihood that La Posta will prevail as a matter of law." (AOB 21, emphasis added.) But the court never reached the likelihood of success on the merits because (leaving aside mootness and the lack of the exceptional circumstances necessary for an antisuit injunction) it held that La Posta could not establish irreparable injury. That holding is reviewed for abuse of discretion.

ARGUMENT

I. La Posta's Failure To Challenge Two Of The Trial Court's Three Grounds For Denying Its Motion For An Antisuit Injunction Requires Affirmance.

The trial court below held that La Posta's motion for an antisuit injunction "must be denied for a multitude of reasons." (5 AA 984.) In particular, the court identified three such reasons: (1) the motion was moot, (2) the motion failed to show the "exceptional circumstances" necessary to justify an antisuit injunction, and (3) the motion failed even to satisfy the requirements for a garden-variety preliminary injunction, because La Posta could not establish irreparable injury. (5 AA 984-87.)

In its opening brief, La Posta fails to challenge the first two reasons. That failure alone provides ample basis to affirm the Superior Court's order. "When a trial court states multiple grounds for its ruling and appellant addresses only some of them, we need not address appellant's arguments because 'one good reason is sufficient to sustain the order from which the appeal was taken.'" (*JTH Tax, supra*, 212 Cal.App.4th at 1237, quoting *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 513; see also *id.* (appellant's "failure to address all bases for the [trial] court's ruling constitutes a waiver of its appellate claim"); *Briley*, *supra*, 66 Cal.App.5th at pp. 133-34 (appellant's "failure to discuss" an "independent basis supporting the trial court's ruling … forfeits its challenge to the ruling".) That is why

basing a decision on alternative grounds is often called a "belt-and-suspenders" approach—if the suspenders fail, the belt still holds up, and vice versa. (*In re Estate of Berger* (2023) 91 Cal.App.5th 1293, 1306.)

And this is hardly some quirk of California law; to the contrary, this is a bedrock rule of appellate procedure. (See, e.g., *Rivero v. Bd. of Regents of Univ. of N.M.* (2020) 950 F.3d 754, 763-65 (10th Cir.) ("If the district court states multiple alternative grounds for its ruling and the appellant does not challenge *all* those grounds in the opening brief, then we may affirm the ruling," emphasis added); *Sapuppo v. Allstate Floridian Ins. Co.* (2014) 739 F.3d 678, 680 (11th Cir.) ("To obtain reversal of a district court judgment that is based on multiple, independent grounds, an appellant must convince us that *every* stated ground for the judgment against him is incorrect. When an appellant fails to challenge properly on appeal one of the grounds on which the district court based its judgment, he is deemed to have abandoned any challenge of that ground, and it follows that the judgment is due to be affirmed," emphasis added.) Indeed, this point is as much about logic as it is about law—if a conclusion is based on multiple independent grounds, then the conclusion cannot be rebutted unless each of those grounds is rebutted.

La Posta never explains what it thinks it is doing by challenging only one of the three bases for the trial court's ruling.

The closest La Posta comes to addressing this issue is to suggest in its opening brief that events overcame the original motion and changed its rationale. According to La Posta, once the tribal court entered a final judgment, La Posta "acknowledged" in its reply brief in support of the motion "that its efforts for an antisuit injunction were likely no longer meaningful," but "[n]onetheless, [its] efforts for a preliminary injunction remained viable." (AOB 17 (citing 4 AA 891-906.)) In other words, La Posta suggests that it abandoned its motion for an antisuit injunction, and merely sought a garden-variety preliminary injunction.

But that is simply not true. La Posta never withdrew its motion for an antisuit injunction, which asked the trial court "to stop parallel proceedings" in the tribal court (4 AA 773), by "(1) enjoin[ing] YAN from litigating in YAN [Tribal] Court and (2) requir[ing] YAN to litigate its claims in this forum" (4 AA 794.) Not surprisingly, that is exactly the motion that the trial court squarely decided and denied in the order now on appeal before this Court (4 AA 983-88.) La Posta's reply brief below in no way purported to withdraw the request for an antisuit injunction in light of the tribal court's final judgment. To the contrary, that brief insisted that "[t]his Motion is *not* moot" despite the final judgment (4 AA 895, emphasis added), and that "[e]xceptional circumstances exist to support an *antisuit injunction*" (4 AA 900, emphasis added.)"

Because La Posta's opening brief on appeal fails to challenge two of the trial court's three separate and independent grounds for denying the motion for an antisuit injunction (mootness and a failure to establish exceptional circumstances), this Court can and should affirm that denial on those unchallenged grounds alone. Needless to say, it is neither necessary nor appropriate for YAN to defend rulings that have not been challenged. And, of course, La Posta cannot challenge those rulings for the first time in its reply brief. (See, e.g., *High Sierra*, *supra*, 29 Cal.App.5th at 111 fn.2 ("New arguments may not be raised for the first time in an appellant's reply brief."); *Christoff*, *supra*, 134 Cal.App.4th at 125 ("[A]n appellant's failure to discuss an issue in its opening brief forfeits the issue on appeal.").)

II. The Trial Court Did Not Abuse Its Discretion By Holding That La Posta Would Not Be Entitled Even To A Garden-Variety Preliminary Injunction.

In addition to denying La Posta's motion on the (unchallenged) grounds that it was (1) moot, and (2) did not satisfy the heightened standards for an antisuit injunction, the trial court further ruled that it "would also deny the motion even under traditional standards governing preliminary injunctions." (5 AA 986.) That is so, the court explained, because La Posta failed to establish that it would suffer irreparable injury from the tribal court proceedings. (5 AA 987.) Insofar as La Posta challenges the validity of those proceedings, the court explained,

it is free to raise any such challenge in a subsequent proceeding to enforce the tribal judgment, in whole or in part, in a California court. (*Id.*)[3]

Even assuming this Court were to address this issue at all despite La Posta's failure to challenge the trial court's alternative holdings, the trial court's decision represents an eminently reasonable exercise of discretion. La Posta twists itself into a pretzel arguing that irreparable injury is not invariably a "threshold" issue in preliminary injunctions. (See AOB 22-26.) But La Posta thereby misses the point. A preliminary injunction is an "extraordinary remedy" of judicial relief *before* the entry of final judgment (*College Hosp., Inc. v. Superior Ct.* (1994) 8 Cal.4th 704, 715), and is warranted only where the ordinary remedy of judicial relief *after* the entry of final judgment would come too late (see, e.g., *Costa Mesa City Emps.' Ass'n v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 305)).

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[3] La Posta in fact confirms the trial court's reasoning by arguing, for example, that even though YAN has now obtained the now Final Judgment issued by the Tribal Court, YAN cannot enforce the San Diego Judgment against the RSTF payments because, *inter alia*, that judgment does not and cannot establish "fraud" under California law or within the meaning of the parties' contract (AOB at 28-32), YAN's enforcement efforts are barred by issue and claim preclusion (*id.* at 33), and that the trial court must ignore the Final Judgment because it has not been recognized under the Tribal Court Civil Money Judgment Act (*id.* at 39).

In particular, La Posta tries to turn this appeal into an academic exercise, arguing that the trial court erred by framing irreparable injury as a "threshold" test as opposed to a component of the "balance of harms" factor. (AOB 22-26.) The short answer is that courts have framed it both ways, which is not surprising given an injunction is an *equitable* remedy characterized by its flexibility. (*Nationwide Biweekly Admin., Inc. v. Superior Ct. of Alameda Cnty.* (2020) 9 Cal.5th 279, 292.) Courts certainly have discretion to analyze one factor before another, and may choose to do so depending on the particular case before them—sometimes, it may make sense to start with likelihood of success on the merits and sometimes it may make sense to start with equitable factors such as the balance of harms.

La Posta's efforts to force the equitable preliminary injunction analysis into an analytical straitjacket are misguided. The key point here, as the trial court recognized, is that La Posta cannot justify even a garden-variety preliminary injunction—much less an antisuit injunction—because it cannot show any injury from the proceedings sought to be enjoined. (See, e.g., *White*, *supra*, 30 Cal.4th at 554 ("To obtain a preliminary injunction, a plaintiff ordinarily is required to present evidence of the irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits."); *Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1352 ("[T]o obtain

injunctive relief the plaintiff must ordinarily show that the defendant's wrongful acts threaten to cause *irreparable* injuries, ones that cannot be adequately compensated in damages," emphasis in original); *Costa Mesa*, *supra*, 209 Cal.App.4th at 306 ("If the threshold requirement of irreparable injury is established, then we must examine two interrelated factors to determine whether the trial court's decision to issue a preliminary injunction should be upheld."); *Choice-in-League v. Los Angeles Unified Sch. Dist.* (1993) 17 Cal.App.4th 415, 422 (to obtain injunctive relief, moving party "must demonstrate a real threat of immediate and irreparable injury due to the inadequacy of legal remedies," internal quotation omitted); *Loder v. City of Glendale* (1989) 216 Cal.App.3d 777, 782-83 (""To qualify for preliminary injunctive relief plaintiffs must show irreparable injury, either existing or threatened,"' quoting *City of Torrance v. Transitional Living Ctrs. for Los Angeles, Inc.* (1982) 30 Cal.3d 516, 526.)

La Posta bases its contrary argument primarily on *Butt v. State of California* (1992) 4 Cal.4th 668, but that case hardly helps its cause. The trial court there *granted* a preliminary injunction, and the Supreme Court affirmed precisely because plaintiffs had shown that "plaintiffs … would suffer '*substantial and irreparable harm*' if a preliminary injunction were denied." (*Id.* at 692-93, emphasis added). Far from dispensing with the irreparable injury requirement, the Supreme Court expressly

rejected the defendants' argument that plaintiffs needed to *also* show that the irreparable harm was "unavoidable by other means." (*Id.* at 693, emphasis added.)

After arguing that "the Superior Court failed to consider the appropriate legal standard" for granting a garden-variety preliminary injunction, La Posta argues that "[u]nder the correct legal standard, [it] is entitled to injunctive relief." (AOB 26; see generally *id.* at 26-37.) But that argument misses the point. La Posta did not seek a garden-variety preliminary injunction; rather, it sought an antisuit injunction, which requires a heightened showing of "exceptional circumstance." (*Advanced Bionics*, *supra*, 29 Cal.4th at 708.) As noted above, the trial court merely observed, in denying La Posta's motion for an antisuit injunction, that the motion was so grossly deficient that it failed to satisfy even the less demanding standard for a garden-variety injunction. But that observation did not magically transform La Posta's motion into a motion for a garden-variety preliminary injunction, or otherwise lower the applicable legal standard. Accordingly, La Posta proves nothing by insisting that, had the trial court addressed the issues in a different order, it would have been constrained to grant a garden-variety preliminary injunction.[4]

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[4] La Posta could not establish an abuse of discretion even were the proper inquiry whether it had provided the trial court with a basis to issue a garden-variety preliminary injunction. La Posta's claimed harm—that it will have to incur additional fees

It follows that La Posta's extended discussion of the factors for granting a garden-variety preliminary injunction is misplaced, as is its generic discussion of the separate subsections of *Code of Civil Procedure* § 526(a) (AOB at 36-37)[5]. La Posta

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litigating in two fora and that the now Final Judgment will undermine its efforts to prevent YAN from enforcing the San Diego Judgment against its RSTF payments (see AOB at 34-35, 37)—do not constitute irreparable harm. See *Eight Unnamed Physicians v. Med. Exec. Comm.* (2007) 150 Cal.App.4th 503, 515, as modified on denial of reh'g (May 22, 2007) (rejecting claim that having to incur hundreds of thousands or even $1 million in litigation expenses established irreparable injury sufficient to excuse exhaustion of remedies requirement); *IT Corp. v. Cnty. of Imperial*, 35 Cal.3d 63, 75 (1983) (threat of "substantial economic loss" does not constitute "grave or irreparable injury"); cf., *Nomadix, Inc. v. Guest-Tek Interactive Entmt. Ltd.*, No. 2:19-CV-04980-AB (FFMx), 2020 WL 3023308, at *2 (C.D. Cal. Apr. 24, 2020) ("although Guest-Tek argues that it will be disadvantaged in its litigation position at trial in a related case absent a stay, such a tactical disadvantage, if any, is insufficient to show irreparable injury"); *Green v. Cnty. of Riverside* (2015) 238 Cal.App.4th 1363, 1369 (for purposes of exclusion under Evidence Code § 352, "[e]vidence is not prejudicial simply because it undermines the opponent's position or shores up that of the proponent").

[5] Nothing in Section 526 dispenses with the requirement that an applicant seeking an antisuit injunction establish the existence of "extraordinary circumstances," as La Posta itself admitted in the court below (4 AA 788-93) or, for that matter, the rule that even a garden-variety preliminary injunction will not issue absent a threat of irreparable injury (see also *People v. Paramount Citrus Ass'n* (1957) 147 Cal.App.2d 399, 412 ("The power to issue an injunction is an extraordinary one to be exercised always with great caution and only in those cases where it appears that the plaintiff will suffer irreparable injury if

may wish to pretend that this case is about the denial of a garden-variety preliminary injunction, but wishful thinking will not make it so. Even if La Posta could show that it met the standard for a garden-variety preliminary injunction—which, as the trial court explained, it cannot—that would not change the fact that the trial court correctly denied La Posta's motion for an antisuit injunction, which is the only issue now before this Court.

III. The Trial Court Correctly Recognized That This Court In *La Posta II* Left The Door Open For The Parties To Return To Tribal Court.

Finally, La Posta challenges the trial court's decision insofar as it interprets this Court's decision in *La Posta II* to leave the door open for the parties to return to tribal court.[6] (AOB 37-42.) Putting aside the fact that appellate courts review decisions, not statements in orders (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 203), the trial court was entirely correct.

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it is not issued.")).

[6] Even were the trial court's interpretation of *La Posta II* incorrect (it is not), it would not matter for purposes of this appeal. The relief requested (and the appeal) would still be moot based on issuance of the Final Tribal Court Judgment, and the trial court's findings that La Posta had failed to establish either the "exceptional circumstances" necessary to support an antisuit injunction or the irreparable injury required for even garden-variety preliminary injunctions are independent of, and not dependent upon, its interpretation of *La Posta II*.

This Court in *La Posta II* reversed the trial court's grant of summary judgment in YAN's favor on the ground that it was unclear whether the tribal judgment on which YAN relief was a "final determination" within the meaning of the parties' agreement. (*La Posta II*, 2022 WL 1025893, at *7-11.) In so ruling, the Court *did not accept* YAN's argument that the original tribal court judgment was necessarily final because YAN had abandoned its claim for declaratory relief in the tribal court. But the Court did not decide that the judgment was not "final" under tribal law, and plainly contemplated further proceedings. (*La Posta II*, 2022 WL 1025893, at *11.) The Court did not specify the forum in which those further proceedings would take place, which is entirely appropriate because that issue was not presented.

Once YAN lost the finality argument in this Court, it determined that it should return to the tribal court in final pursuit of its claim for declaratory relief after all. Accordingly, it returned to tribal court and asked for the entry of an indisputably final judgment that resolved all claims. Under no circumstance was YAN judicially estopped from reversing course on its abandonment argument because this Court did not accept that argument and judicial estoppel applies only when a party obtains a favorable ruling by making an argument that it later contradicts. (See, e.g., *Swahn Grp., Inc. v. Segal* (2010) 183

Cal.App.4th 831, 845; *Jogani v. Jogani* (2006) 141 Cal.App.4th 158, 169.)

Thus, as the trial court noted, YAN's decision to return to the tribal court was certainly "a logical response" to *La Posta II*. (5 AA 986.) At the very least, nothing in *La Posta II* precluded YAN from returning to tribal court once this Court concluded that it was unclear whether the tribal court's previous judgment was a "final determination" that resolved the parties' dispute. And La Posta, of course, is in no position to complain, given that it was the one urging this Court in *La Posta II* to conclude that the tribal court's original judgment was not final precisely because the claim for declaratory relief remained outstanding.

IV. CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's denial of La Posta's motion for an antisuit injunction. It should affirm because La Posta fails even to challenge either of the twin bases on which the trial court denied the motion—mootness and lack of the "exceptional circumstances" necessary for an antisuit injunction. And it should do so because the trial court did not abuse its discretion in *also* finding that it would deny La Posta's motion even had La Posta merely sought a garden-variety preliminary injunction rather than an order enjoining the judicial proceedings of a sovereign nation.

DATED: September 28, 2023 ELLIS GEORGE CIPOLLONE O'BRIEN LLP

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CERTIFICATE OF COMPLIANCE WITH RULE 8.204

Pursuant to Rule 8.204 of the California Rules of Court, the attached **Respondent Yavapai-Apache Nation's Brief** is proportionately spaced, has a typeface of 13 points or more and contains **5,669** words, including footnotes.

DATED: September 28, 2023 ELLIS GEORGE CIPOLLONE O'BRIEN LLP

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PROOF OF SERVICE

La Posta Band of Diegueno Mission Indians v. Yavapai-Apache Nation
3rd Appellate Dist. Court of Appeal Case No C098204

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2121 Avenue of the Stars, 30th Floor, Los Angeles, CA 90067.

On September 28, 2023, I served true copies of the following document(s) described as **RESPONDENT YAVAPAI-APACHE NATION'S BRIEF** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Ellis George Cipollone O'Brien Annaguey LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

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

Executed on September 28, 2023, at Los Angeles, California.

Diane Torosyan

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