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Attorney for
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ACTING UNITED STATES TRUSTEE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re:	Case No.: 12-09415-PB11
SANTA YSABEL RESORT AND CASINO,	ACTING UNITED STATES TRUSTEE'S MOTION TO DISMISS CASE
Debtor.	Date: September 4, 2012 Time: 11:00 a.m. Dept.: Four Judge: Hon. Peter W. Bowie

The Acting United States Trustee ("United States Trustee"), through counsel, respectfully moves this Court to enter an Order dismissing this case. This motion is brought pursuant to 11 U.S.C. §§109(d) and 1112(b) of the Bankruptcy Code. In support of its motion, the United States Trustee submits the following:

I. OVERVIEW

The United States Congress enacted the Bankruptcy Code to allow Chapter 11 bankruptcy relief for a "person". The definition of "person" specifically excludes "governmental units" as entities that may file for bankruptcy protection. The Debtor's structure, purpose, and authorization to conduct business activities by a tribal ordinance make it clear that it is an inclusive part of the Iipay Nation of Santa Ysabel and is not a separate legal entity. Indian tribes, as domestic governments, are "governmental units". As such, the Debtor is not a "person" for

the purposes of Title 11 and is therefore ineligible to be a Chapter 11 debtor. Therefore, the court should dismiss this Chapter 11 bankruptcy case.

II. FACTUAL BACKGROUND

On July 2, 2012, Santa Ysabel Resort and Casino ("Debtor") filed a chapter 11 bankruptcy petition.¹ The Voluntary Petition listed the "Type of Debtor" as a Corporation.²

Simultaneously with the filing of the Voluntary Petition, the Debtor filed a document titled, "**RESOLUTION No. 10-12 Approving Filing of Bankruptcy Petition for Santa Ysabel Resort and Casino**" ("Resolution"). This Resolution states that the Lipay Nation of Santa Ysabel ("Nation") is a "federally recognized Indian tribe", which, under its Constitution, has responsibilities related to the operation of the Santa Ysabel Casino, a venture owned by the Nation, and operated by professional management as a separate business and an unincorporated company. Under the Resolution, the Nation authorizes and directs its Chairman, on behalf of and in the name of the Casino, "to execute a Chapter 11 bankruptcy petition and all related documents and papers on behalf of the Company in order to enable the Company to commence its Chapter 11 bankruptcy case". The Resolution was signed by the Nation's Chairman, Virgil Perez.³

At the request of the United States Trustee, as part of its operating and reporting requirements, the Debtor provided the United States Trustee with a Supplemental 7-Day Package ("Supplemental Package") which includes 1) Documentation as to the formation, existence, and organization of the Debtor, Santa Ysabel Resort and Casino, Articles, Bylaws or

¹ The United States Trustee requests that the court take judicial notice of the court's docket and all pleadings/records filed in this bankruptcy case pursuant to Federal Rule of Evidence ("Fed. R. Evid.") 201. See Barry Russell, BANKRUPTCY EVIDENCE MANUAL (WEST 2005) §201.5 at 589-90; See also *In re Calder*, 907 F.2d 953, 955 n.2 (10th Cir. 1990); *In re Snider Farms, Inc.*; 125 B.R. 993, 995 (Bankr. N.D. Ind. 1991).

² See Declaration of Shannon Vencill, Bankruptcy Analyst for the Office of the United States Trustee in Support of the United States Trustee's Motion to Dismiss Case ("Vencill Declaration") filed simultaneously herewith and incorporated by reference; and Voluntary Petition; Docket No. 1; p.1.

³ Vencill Declaration; pp.1, 2; and Resolution; Docket No. 1; pp. 16, 17.

1 Operating Agreements; 2) Narrative of Debtor's formation, existence and organization, including
 2 applicable laws governing Debtor's formation, existence and organization; 3) Explanation of tax
 3 status; 4) Explanation of anti-alienation of tribal land; and 5) Applicability of the Indian
 4 Reorganization Act.⁴

5 According to the Supplemental Package, the Iipay Nation of Santa Ysabel, (formerly known
 6 as the Santa Ysabel Band of Mission (Diegueno) Indians) ("Tribe") is a federally recognized
 7 Indian tribe. The Santa Ysabel Reservation ("Reservation") consists of three tracts of land
 8 located in Santa Ysabel, California.⁵

9 In 2003, the Tribe entered into a Tribal-State Compact with the State of California pursuant
 10 to the Indian Gaming Regulatory Act of 1988 ("IGRA") for the purpose of authorizing the Tribe
 11 to establish gaming enterprises.⁶ The Tribe enacted the Iipay Nation of Santa Ysabel Gaming
 12 Ordinance ("Ordinance") for the purpose of authorizing and regulating terms and conditions
 13 under which gaming may be conducted within the boundaries of the Reservation. The Tribe
 14 created the SANTA YSABEL RESORT AND CASINO ("Debtor") to conduct gaming activities
 15 upon tribal lands.⁷

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 19 ⁴ See Vencill Declaration and Supplemental Package attached thereto as Exhibit 1. Factual
 20 Statements regarding the formation and existence of the Debtor are also included in the Omnibus
 21 Statement of Facts and Statement of David Chelette in Support Thereof filed in this case on July
 22 3, 2012 ("Omnibus Statement") (Docket No. 11) and in the Debtor's Application to Employ
 Levene, Neale, Bender, Yoo and Brill, L.L. P. as General Bankruptcy Counsel Effective as of
 July 2, 2012; Declaration of Ron Bender, Esq. in Support Thereof ("Bender Application") filed
 in this case on July 6, 2012 (Docket No. 12).

23 ⁵ Vencill Declaration; p. 2; and Supplemental Package (Exhibit 1); pp. 1, 3.

24 ⁶ Congress, for three (3) key purposes, enacted IGRA as a framework by which to regulate
 25 Indian gaming: First, to promote tribal economic development, economic self-sufficiency, and
 26 strong tribal governments; Second, to create a statutory basis for regulating Indian gaming so as
 27 to shield the industry from organized crime and corrupting influences; Third, to establish a
 Federal regulatory authority to oversee gaming operations as a means to protect tribal revenue
 from gaming operations. 25 U.S.C. §2702.

28 ⁷ Vencill Declaration; pp. 2, 3; and Supplemental Package (Exhibit 1); pp. 1, 2 and attached
 Exhibit A (Ordinance); p. 1.

1 The Supplemental Package states that both the Tribe and the Debtor, as a tribal
2 instrumentality, are not taxable entities for federal income tax purposes. As such, the Debtor has
3 filed no federal income tax returns.⁸

4 Under the Ordinance, the gaming revenues of the Debtor are to be used to fund the Tribal
5 government operations and programs, provide for welfare of the Tribe and its members, promote
6 Tribal economic development, donate to charitable organizations, and help fund operations of
7 local government agencies. The Tribe may also elect to make per capita payments to members
8 of the Tribe from these revenues.⁹

9 In June of 2010, the Tribal Chairman, Johnny M. Hernandez, filed a Fictitious Business
10 Name Statement with the County of San Diego. This Fictitious Business Name Statement listed
11 Santa Ysabel Resort and Casino (the Debtor) as a Fictitious Business Name for the Santa Ysabel
12 Band of Diegueno Indians (the Tribe).¹⁰

14 **III. ARGUMENT**

16 11 U.S.C. Section 1112(b) provides that the Court may dismiss a case for “cause”. 11
17 U.S.C. § 1112(b). The threshold issue in any bankruptcy case is whether the party filing for
18 bankruptcy relief is eligible to be a debtor in the chapter under which the bankruptcy petition was
19 filed. In re First Assured Warranty Corporation, 383 B.R. 502, 518 (Bankr. D. Co. 2008). The
20 bankruptcy court has sole and exclusive responsibility to determine eligibility for bankruptcy
21 relief. Id. Ineligibility of a debtor to file for bankruptcy relief is “cause” to dismiss a case. See
22 In re Borges, 440 B.R. 551, 562 (Bankr. D. N.M. 2010) (Debtor’s failure to receive credit
23 counseling made Debtor ineligible to file bankruptcy, resulting in the dismissal of his Chapter 11
24 case). See also In re Seaman, 340 B.R. 698, 708 (Bankr. E.D. N.Y. 2006).

26 ⁸ Vencill Declaration; p. 3; and Supplemental Package (Exhibit 1); p. 3.

27 ⁹ Vencill Declaration; p. 3; and Supplemental Package (Exhibit 1) at Exhibit A (Ordinance); p. 4.

28 ¹⁰ Vencill Declaration; p. 3; and Supplemental Package (Exhibit 1) at Exhibit B.

1 For the reasons set forth below, the Debtor in this case is not an eligible debtor under 11
 2 U.S.C. §109, mandating the dismissal of this Chapter 11 case.

3
 4 **A. The Debtor Is A “Governmental Unit” As Defined In The Bankruptcy Code**
 5 **Because It Is An Inclusive Part Of The Iipay Nation Of Santa Ysabel.**

6 Only “persons” and “municipalities” are eligible to file for bankruptcy. 11 U.S.C. §
 7 109(a). The Debtor must be a “person” to be eligible to file for Chapter 11 bankruptcy relief. 11
 8 U.S.C. § 109(d). ¹¹ The term “person” is defined in 11 U.S.C. §101(41) as follows:

9 The term “person” includes individual, partnership and corporation, but
 10 does not include governmental unit [.]
 11 [11 U.S.C. §101(41)].

12 The Debtor’s bankruptcy petition lists the Debtor as a “Corporation”, and the Resolution
 13 states that the Debtor is an “unincorporated company”, so it would appear initially that the
 14 Debtor would fall within §101(41)’s definition of a “person”. That section, however, goes on to
 15 state that “person’ ... does not include governmental unit [.]”

16 The term “governmental unit” is defined as follows:

17 The term “governmental unit” means United States; State; Commonwealth;
 18 District; Territory; municipality; foreign state; department, agency, or
 19 instrumentality of the United States (but not a United States trustee while
 20 serving as a case trustee under this title), a State, a Commonwealth, a District,
 a Territory, a municipality, or a foreign state; or other foreign or domestic
 government.

21 In a recent case involving the Tribe, the California Court of Appeals stated that “Indian
 22 tribes represent a particular variety of a sovereign power, domestic dependent nations.” Yavapai-
 23 Apache Nation v. Iipay Nation of Santa Ysabel, 201 Cal. App. 4th 190, 210 (2011). Under the
 24 Bankruptcy Code, Indian tribes, as domestic governments, are “governmental units”. Krystal
 25 Energy Co. v. Navajo Nation, 357 F.3d 1055, 1059 (9th Cir. 2004) (stating that when the

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 28 ¹¹ Section 109(d) has other qualifiers that are not relevant to this case.

1 Bankruptcy Code was drafted, it was against the backdrop of Indian tribes being defined as
2 domestic nations, i.e. governments).

3 In the Ninth Circuit, the actions of an Indian casino are those of the tribe when it acts as
4 an arm of the tribe. Cook v. Avi Casino Enterprise, Inc., 548 F.3d 718, 725-26 (9th Cir. 2008)
5 (citing Allen v. Gold Country Casino), 464 F.3d 1044 (9th Cir. 2006). In the Cook case, the court
6 examined key factors in determining whether the casino was an arm of the tribe for sovereign
7 immunity purposes. These factors included: whether the tribe authorized the casino through a
8 tribal ordinance and interstate gaming compact, whether the operation was wholly owned by the
9 tribe, whether the economic benefits of the gaming operation inured to the benefit of the tribe,
10 and whether the immunity of the casino protected the tribe's treasury. Id. at 726.

11 The facts of this case evidence that the Debtor is an arm of the Tribe under the factors set
12 forth in the Cook case. The Tribe entered into a Tribal-State compact with the State of
13 California in order that gaming could be conducted within the boundaries of the Reservation.
14 The Tribe then created the Debtor to conduct gaming activities upon tribal land. The Debtor's
15 activities are regulated by Tribal Ordinance.

16 The Debtor is wholly owned by the Tribe, and was formed to provide economic benefit to
17 the Tribe through gaming revenues. As set forth in the Resolution, the Debtor is "a venture
18 owned by the Nation (Tribe)", and the Tribal Constitution's governance enables the Executive
19 branch to "advance certain economic development initiatives" including responsibilities related
20 to the operation of the Debtor.¹² The Ordinance provides that the Debtor's gaming revenues are
21 to be used for the economic benefit of the Tribe: to fund the Tribal government operations and
22 programs, provide for the welfare of the Tribe and its members, promote Tribal economic
23 development, donate to charitable organizations, and help fund operations of local government
24 agencies. The Ordinance also provides that the Tribe may also elect to make per capita
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28 ¹² Vencill Declaration; pp. 1, 2; and Resolution; Docket No. 1; p. 16; See also Exhibit A
(Ordinance; p. 3; IV. Ownership of Gaming Operations).

1 payments to members of the Tribe from these revenues.¹³ The Debtor and the Tribe are not
2 taxable entities for federal income tax purposes.¹⁴

3 With regard to immunity, the court in the Yavapai-Apache Nation case (supra) found
4 that although the Tribe had a valid claim of sovereign immunity, it waived the immunity in the
5 loan agreements used to construct the casino (Debtor).¹⁵ Thus, while the immunity of the casino
6 (Debtor) could arguably have protected the Tribe's treasury from such claims, the Tribe waived
7 this immunity. The Debtor now lists these claims in its bankruptcy schedules.¹⁶ Under the
8 standards articulated in the Cook case, the Debtor is certainly an arm of, and an inclusive part of,
9 the Tribe.

10 Facts set forth in the Debtor's Application to Employ Levene, Neale, Bender, Yoo &
11 Brill, L.L.P. ("Levene") as General Bankruptcy Counsel Effective as of July 2, 2012; Declaration
12 of Ira Bibbero in Support Thereof ("Levene Application") also evidence that the Debtor is an
13 inclusive part of the Tribe.¹⁷ The Retention Agreement to the Levene Application ("Retention
14 Agreement") provides that Levene is only employed by the Tribe, and expressly prohibits Levine
15 from representing any party other than the Tribe in the bankruptcy case, including "such parties
16 as CLIENT's members, or any partnerships, corporations, guarantors, and affiliates related to
17 CLIENT".¹⁸ Further, the Levine Application states that the Tribe funded the legal fees
18 (Retainer) paid to Levine, and proposes to fund further payments for Levine's attorney's fees
19 for representation in this chapter 11 bankruptcy case.¹⁹

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22 ¹³ Vencill Declaration; p. 3; and Supplemental Package (Exhibit 1) at Exhibit A (Ordinance); p.
23 4.

24 ¹⁴ Vencill Declaration; p. 3; and Supplemental Package (Exhibit 1); p. 3.

25 ¹⁵ Yavapai-Apache Nation v. Iipay Nation of Santa Ysabel, 201 Cal. App 4th at 214-216.

26 ¹⁶ Vencill Declaration; p. 3; and Schedule D; Docket No. 46.

27 ¹⁷ Levene Application; Docket No. 34.

28 ¹⁸ See Retention Agreement attached to the Levene Application (Docket No. 34) as Exhibit 1; p.
1, §2; p. 4, §7.

¹⁹ Levene Application; Docket No. 34; p. 7, §§18, 19.

1 The Debtor's own schedules support the fact that the Tribe and the Debtor are one and
 2 the same. On Schedule D, Creditors Holding Secured Claims, the Debtor schedules "Yavapai-
 3 Apache Nation" ("Yavapai") as a secured creditor holding a claim in the amount of
 4 \$40,514,558.45. The claim is listed as secured by a "blanket lien" on all of the Debtor's
 5 Personal Property.²⁰ In the Debtor's own Omnibus Statement, the Debtor admits that the
 6 Yavapai received a judgment against the Tribe (not the Debtor) and that the judgment lien
 7 "purports to attach to all personal property of the Iipay Nation, including the Debtor's personal
 8 property at the Casino."²¹

9 The Tribe's own actions evidence that the Tribe and the Debtor are one and the same.
 10 The Tribe's chairman filed with the County of San Diego a Fictitious Business Name Statement
 11 declaring the Debtor to be a fictitious business name for the Tribe.²²

12 The facts presented by the Debtor and its own admissions²³ evidence that the Debtor is an
 13 inclusive a part of the Tribe, and is a "governmental unit" as defined in §101(27).

14 **B. Because It Is A "Governmental Unit," The Debtor Is Ineligible To File For**
 15 **Chapter 11 As A "Person."**

16 Governmental units are specifically excluded from the definition of a "person" that is
 17 eligible to file for Chapter 11 bankruptcy relief. 11 U.S.C. § 101(41). See Rattlesnake Coalition
 18 v. U.S. E.P.A., 509 F.3d 1095, 1103 (9th Cir. 2007) (In the definition of "agency", the use of the
 19 phrase "does not include Congress" specifically excluded Congress from its definition); In re
 20 Minton Group, Inc., 28 B.R. 774, 780 (Bankr. S.D. N.Y. 1983) (In the definition of "statutory
 21 lien", the use of the phrase, "does not include ... judicial liens", excludes judicial liens from its
 22 definition); In re SemCrude, L.P., 436 B.R. 317, 320 (Bankr. D. Del. 2010) (because the
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25 ²⁰ Vencill Declaration; p. 3; and Schedule D; Docket No. 46.

26 ²¹ Omnibus Declaration; Docket No. 11; pp. 3, 4.

27 ²² See footnote 10.

28 ²³ Statements of the Debtor deemed to be "admissions" are admissible under Fed.Rule.Evid.
 801(d) (2).

1 definition of "corporation" "does not include limited partnership", limited partnerships are
2 excluded from its definition).

3 The Debtor, as a "governmental unit", is specifically excluded from the definition of
4 "person" under Section 101(41). Since the Debtor is not a "person", it is not eligible to file for
5 Chapter 11 bankruptcy relief. Therefore, the Debtor's chapter 11 bankruptcy case must be
6 dismissed.

7 **IV. CONCLUSION**

8 For the foregoing reasons, the UST respectfully requests that this Court enter an Order
9 dismissing this Chapter case and providing such other relief as is just and proper.

10 Respectfully submitted,
11 TIFFANY L. CARROLL
12 ACTING UNITED STATES TRUSTEE

13 Date: August 7, 2012

14 By: /s/ *Mary Testerman DuVoisin*
15 Mary Testerman DuVoisin
16 Trial Attorney for the Acting United States Trustee
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(619) 557-5013

Attorney for
TIFFANY L. CARROLL
ACTING UNITED STATES TRUSTEE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re:	}	Case No.: 12-09415-PB11
SANTA YSABEL RESORT AND CASINO,		DECLARATION OF SHANNON VENCILL IN SUPPORT OF THE ACTING UNITED STATES TRUSTEE'S MOTION TO DISMISS CASE
		Date: September 4, 2012 Time: 11:00 a.m. Dept.: Four Judge: Hon. Peter W. Bowie
Debtor.		

I Shannon Vencill, declare:

1. I am a bankruptcy analyst employed by the Office of the United States Trustee for the Southern District of California. I have personal knowledge of the facts stated herein, and could competently testify thereto if called as a witness to do so.

2. On July 2, 2012, Santa Ysabel Resort and Casino ("Debtor") filed a chapter 11 bankruptcy petition. The Voluntary Petition listed the "Type of Debtor" as a Corporation.¹

3. Simultaneously with the filing of the Voluntary Petition, the Debtor filed a document titled, "**RESOLUTION No. 10-12 Approving Filing of Bankruptcy Petition for Santa Ysabel Resort and Casino**" ("Resolution"). This Resolution states that the Iipay Nation of Santa Ysabel ("Nation") is a "federally recognized Indian tribe", which, under its Constitution, has responsibilities related to the operation of the Santa Ysabel Casino, a venture owned by the

¹ See Voluntary Petition; Docket No. 1; p.1.

1 Nation, and operated by professional management as a separate business and an unincorporated
2 company. This Resolution provides that the Tribal Constitution's governance enables the
3 Executive Branch to "advance certain economic development initiatives" including
4 responsibilities related to the operation of the Casino. Under the Resolution, the Nation
5 authorizes and directs its Chairman, on behalf of and in the name of the Casino, "to execute a
6 Chapter 11 bankruptcy petition and all related documents and papers on behalf of the Company
7 in order to enable the Company to commence its Chapter 11 bankruptcy case". The Resolution
8 was signed by the Nation's Chairman, Virgil Perez.²

9 4. At the request of the United States Trustee, as part of its operating and reporting
10 requirements, the Debtor provided the United States Trustee with a Supplemental 7-Day
11 Package ("Supplemental Package") which includes 1) Documentation as to the formation,
12 existence, and organization of the Debtor, Santa Ysabel Resort and Casino, Articles, Bylaws or
13 Operating Agreements; 2) Narrative of Debtor's formation, existence and organization, including
14 applicable laws governing Debtor's formation, existence and organization; 3) Explanation of tax
15 status; 4) Explanation of anti-alienation of tribal land; and 5) Applicability of the Indian
16 Reorganization Act. A true and correct copy of the Supplemental Package is attached hereto as
17 Exhibit 1.

18 5. According to the Supplemental Package (Exhibit 1), the Iipay Nation of Santa Ysabel,
19 (formerly known as the Santa Ysabel Band of Mission (Diegueno) Indians) ("Tribe") is a
20 federally recognized Indian tribe. The Santa Ysabel Reservation ("Reservation") consists of
21 three tracts of land located in Santa Ysabel, California.³

22 6. The Supplemental Package ("Exhibit 1) further provides that in 2003, the Tribe entered
23 into a Tribal-State Compact with the State of California pursuant to the Indian Gaming
24 Regulatory Act of 1988 ("IGRA") for the purpose of authorizing the Tribe to establish gaming
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27 ² See Resolution; Docket No. 1; pp. 16, 17.

28 ³ See Supplemental Package (Exhibit 1); pp. 1, 3.

1 enterprises. The Tribe created the SANTA YSABEL RESORT AND CASINO (“Debtor”) to
2 conduct gaming activities upon tribal lands.⁴

3 7. The Supplemental Package states that both the Tribe and the Debtor, as a tribal
4 instrumentality, are not taxable entities for federal income tax purposes. As such, the Debtor has
5 filed no federal income tax returns.⁵

6 8. The Supplemental Package attaches, as Exhibit A, a document entitled, “Iipay Nation of
7 Santa Ysabel Gaming Ordinance” (“Ordinance”). The Tribe enacted the Ordinance for the
8 purpose of authorizing and regulating terms and conditions under which gaming may be
9 conducted within the boundaries of the Reservation. Under the Ordinance, the gaming revenues
10 of the Debtor are to be used to fund the Tribal government operations and programs, provide for
11 welfare of the Tribe and its members, promote Tribal economic development, donate to
12 charitable organizations, and help fund operations of local government agencies. The Tribe may
13 also elect to make per capita payments to members of the Tribe from these revenues.⁶

14 9. The Supplemental Package attaches, as Exhibit B, a document entitled, “Fictitious
15 Business Name Statement”. This “Fictitious Business Name Statement” was filed with the
16 County of San Diego in June of 2010, and was signed by Johnny M. Hernandez, Tribal
17 Chairman. This Fictitious Business Name Statement lists Santa Ysabel Resort and Casino (the
18 Debtor) as a Fictitious Business Name for the Santa Ysabel Band of Diegueno Indians (the
19 Tribe).⁷

20 10. The Debtor filed its bankruptcy schedules on July 23, 2012. The Debtor’s Schedule D –
21 Creditors Holding Secured Claims, lists the Yavapai-Apache Nation as a creditor with a claim in
22 the amount of \$40,514,558.45, secured by a Blanket Lien in all of the Debtor’s Personal
23 Property.⁸

24
25 ⁴ See Supplemental Package (Exhibit 1); pp. 1, 2.


26 ⁵ See Supplemental Package (Exhibit 1); p. 3.

27 ⁶ See Supplemental Package (Exhibit 1) at Exhibit A (Ordinance); p. 4.

28 ⁷ See Supplemental Package (Exhibit 1) at Exhibit B.

⁸ See Schedule D; Docket No. 46.

1 I declare under penalty of perjury under the laws of the State of California and the United
2 States that to the best of my knowledge and belief, the foregoing is true and correct. Executed
3 this 7th day of August, 2012, at San Diego, California.

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5 /s/ Shannon Vencill
6 Shannon Vencill,
7 Bankruptcy Analyst
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LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
LAW OFFICES

LNBY & B

Date: July 16, 2012

To: VIA Federal Express

Mary Testerman DuVoisin
Trial Attorney for the Acting United States
Trustee
402 West Broadway; Suite 600
San Diego, CA 92101

From: J.P. Fritz, Esq.

Subject: Santa Ysabel Resort and Casino; 12-09415

Enclosed please find: Supplemental 7-day Package

☐ For your information

☐ Please telephone me

☒ In accordance with your
request

☐ Please read and advise
me how to reply

☐ Please sign

☐ Please acknowledge
receipt

☐ Please read

☐ For your files

☐ Please comment

EXHIBIT "1"

Attorney or Professional Name, Address, Telephone, and FAX. Ron Bender (SBN 143364) John-Patrick M. Fritz (SBN 245240) Levene, Neale, Bender, Yoo & Brill L.L.P. 10250 Constellation Blvd., Suite 1700 Los Angeles, CA 90067 Telephone (310) 229-1234 / Facsimile (310) 229-1244 Proposed Attorneys for Debtor and Debtor in Possession	
UNITED STATES BANKRUPTCY COURT Southern District of California	
In re: SANTA YSABEL RESORT AND CASINO, <div style="text-align: right;">Debtor and Debtor in Possession</div>	Chapter 11 Case Number 12-09415-PB11 7-DAY PACKAGE SUPPLEMENT COVER SHEET

Dated:
7/13/2012

SANTA YSABEL RESORT AND CASINO

By: /s/ John-Patrick M. Fritz
 John-Patrick M. Fritz
 Levene, Neale, Bender, Yoo & Brill L.L.P.
 Proposed Attorneys for Debtor and Debtor in Possession

In re Santa Ysabel Resort and Casino

Chapter 11

Case No. 12-09415-PB11

SUPPLEMENTAL SUBMISSION

Documentation as to the formation, existence and organization of the Debtor, Santa Ysabel Resort and Casino, Articles, Bylaws, or Operating Agreements

The Debtor is a tribal instrumentality that is an unincorporated company, and it does not have articles of incorporation, bylaws, or operating agreements. The Debtor's business activities are authorized by the Iipay Nation's tribal government pursuant to the Iipay Nation of Santa Ysabel Gaming Ordinance. The Gaming Ordinance also establishes the Iipay Nation of Santa Ysabel Gaming Commission, which serves to regulate and police the Debtor's gaming activities. The current gaming commissioner is Andrew Hofstetter.

Please find attached hereto as Exhibit "A" the Gaming Ordinance. The Debtor's documentation showing that it is known and doing business as the Santa Ysabel Resort and Casino is attached hereto as Exhibit "B." A letter from the Department of the Treasury assigning a taxpayer identification number to the Debtor, Santa Ysabel Resort & Casino (and not the Tribe) is attached hereto as Exhibit "C."

Narrative of Debtor's formation, existence and organization, including applicable laws governing Debtor's formation, existence and organization

On February 10, 1893, United States President Benjamin Harrison signed an executive order and created the Santa Ysabel Patent, which includes Tracts 1, 2, and 3 of the Santa Ysabel Reservation. The original inhabitants of the Santa Ysabel Valley called themselves the "Iipay," meaning "the People."

On November 20, 2007, the Tribe, by a majority ballot vote of the General Membership, certified the adoption of a new Tribal Constitution for self-governance. The Constitution reasserted the Tribe's sovereign right of self-determination by first and foremost establishing itself as the Iipay Nation of Santa Ysabel (the Tribe was formally known as the Santa Ysabel Band of Mission (Diegueno) Indians). The Tribe has approximately 800 enrolled members. The Tribal government has a chairman, a vice-chair, currently seven council members, and a general counsel.

On or about September 9, 2003, the Tribe entered into a Tribal-State Compact with the State of California, pursuant to the Indian Gaming Regulatory Act of 1988, as codified at 18 U.S.C. § 1166 *et seq.* and 25 U.S.C. § 2701 *et seq.* ("IGRA"). The Compact was signed by the Secretary of the Interior on November 21, 2003. The purpose of the Compact was to authorize the Tribe to establish its gaming enterprises.

On or about January 12, 2005, the Tribe entered into an Intergovernmental Agreement with the County of San Diego, pursuant to section 10.8 of the Compact, for the purpose of developing project specific terms and conditions addressing implementation of feasible mitigation measures and feasible project alternatives concerning problem and pathological gambling and significant off-reservation environmental effects stemming the establishing and operating a gaming enterprise.

On or about April 22, 2005, the Tribe entered into a Loan Agreement with JP Morgan Chase Bank, N.A. ("JP Morgan"), the Yavapai-Apache Nation ("YAN"), and IGT for loans in the aggregate of approximately \$33,000,000,000 to finance, build, and equip the casino.

The Debtor is a casino (the "Casino") located off of Highway 79 in North San Diego County overlooking Lake Henshaw on beautiful, scenic tribal Indian reservation land in Santa Ysabel, California. The Casino is housed in a one-story, 37,000 square-foot building with 349 class III slot machines, four poker tables, six table games, and a restaurant and bar with 200-person seating capacity. The Casino employs approximately 120 people and is the largest employer in Santa Ysabel.

The Debtor is an unincorporated company. The Casino is owned by the Iipay Nation of Santa Ysabel, formerly known as the Santa Ysabel Band of Mission (Diegueno) Indians (the "Iipay Nation"). The Iipay Nation is a federally recognized Indian tribe. The Casino is operated pursuant to the Indian Gaming Regulatory Act ("IGRA") under title 25 of the United States Code.

The Casino originally was conceived as a full-service resort, hotel, and casino, offering a one-stop destination for visitors to enjoy the beautiful surrounding lake and mountain lands, stay at the hotel, dine at the resort restaurant, enjoy all the amenities of a resort, and gamble at the casino. Surfacing, leveling, and compaction of soil for construction began in 2003. Construction on the Casino building began in 2005. Unfortunately, construction took place at the height of the Southern California construction boom between 2005 and 2007, when prices for real estate, building materials, and labor were at their highest. Due to the high price of construction, there were insufficient funds to complete the resort and hotel, and only the Casino with its restaurant and bar were built.

The Casino opened in 2007 as sub-prime mortgage securities began to default in large numbers, the real estate market began to crash, and the general economy entered a severe and historic recession. With a slowing economy, leisure gaming revenue plummeted, and there were no loans available to complete the construction of the hotel and resort. Additionally, wildfires in 2007 shut down the Casino for over a week, immediately creating an operating deficit. Because all capital had been spent on the construction of the Casino, there were insufficient funds to adequately advertise and promote the Casino's grand opening to potential guests.

The Casino was funded with a primary loan from JP Morgan in the amount of approximately \$26,000,000 (the "JP Morgan Debt") and a secondary loan from the Yavapai Apache Nation (the "YAN") in the amount of approximately \$7,000,000. In 2009 the YAN purchased JP Morgan's note. The Casino's gaming machines are provided by IGT. In order to operate the Casino, the Debtor entered into the Intergovernmental Agreement with the County of San Diego (the "County") to provide for, amongst other things, law enforcement support for the Casino and to compensate the County for the impact that the Casino would have on the surrounding community.

The debt service to JP Morgan, the YAN, and compensation to the County under the MOU were all premised on a fully operating hotel, resort, and casino and were calculated in the years before the recession. However, without a hotel and resort, the Casino could not produce the projected revenues to cover the projected payments. These projected payments were never restructured or modified to take into account the real world situation of the Casino operating without a hotel and resort, much less in a down economy.

On or about February 8, 2012, the YAN received a judgment against the Lipay Nation of Santa Isabel [sic] in the Yavapai-Apache Nation Tribal Court in the amount of \$9,004,577.64. The YAN had the judgment recognized by a California state court on May 29, 2012, and recorded the YAN judgment lien with the California Secretary of State on June 8, 2012. The judgment lien purports to attach to all personal property of the Lipay Nation, including the Debtor's personal property at the Casino.

The Debtor was unable to pay the County its monthly payments of \$50,000 for a total of \$600,000 per year under the MOU, and on May 29, 2012, the County levied upon the Debtor's bank account. At a hearing on May 31, 2012, the San Diego Superior Court chastised the County for unlawfully levying upon the Debtor's bank account, but the account has remained frozen with \$70,000 in funds.

In the weeks leading up to the Petition Date, the Debtor requested mediation with the YAN and the County to restructure the debt service and renegotiate the MOU but without success. The County continued to pursue the Debtor's assets, cash, and bank accounts, and the YAN threatened to foreclose on the Debtor's personal property, which would shut down the Casino and immediately result in the loss of 120 jobs in the local community. In order to save the Casino, preserve the local community jobs, restructure the debts to the YAN, restructure the terms of the MOU, and preserve the estate for the benefit of all creditors of the estate and parties in interest, the Debtor decided in its reasonable business judgment to file for chapter 11 bankruptcy.

Explanation of tax status

The Lipay Nation, a federally recognized Indian tribe, and the Debtor, as a tribal instrumentality, are not taxable entities for federal income tax. U.S. Const. Treaty Clause, 14th Amendment, and Commerce Clause, and IRS Rev. Rul. 67-284, 1967-2 C.B. 55; Rev. Rul. 81-295, 1981-2 C.B. 15; Rev. Rul. 94-16, 1994-1 C.B. 19; Rev. Rul. 94-65, 1994-2 C.B. 14. Accordingly, the Debtor has not filed federal income tax returns.

Explanation of anti-alienation of tribal land

The real property for the Casino is owned by the Lipay Nation of Santa Ysabel, a federally recognized Indian tribe, and the real property is Indian reservation land. Under federal law, specifically, but not limited to 25 U.S.C. § 81, the land cannot be encumbered by liens or alienated from the Tribe except through strict procedures and approval by the Secretary of the Interior. Pursuant to 25 U.S.C. § 2711, management contracts for Indian gaming enterprises cannot convey any interest in land or other real property unless specific statutory authority exists and unless clearly specified in writing in the contract and approved by National Indian Gaming Commission.

It is long-held Supreme Court doctrine that the United States is trustee or guardian for the tribes. This role traces to the Supreme Court's opinion in *Cherokee Nation v. Georgia*, in which Chief Justice John Marshall wrote that the relationship of the tribes to the United States resembles that of a "ward to its guardian." Because of this role, the United States holds the underlying fee title to tribal lands in trust for the tribes. For this reason, they are styled "trust lands." The role of the United States as guardian or trustee has several consequences. When

managing tribal or individual Indian property, the United States is held to a high standard of care. The tribal status as ward entitles tribes to sue officers of the United States when that standard of care is violated. In addition, because they are federal wards, tribes may seek United States assistance in litigating against states or private parties. As the Supreme Court decided in *United States v. Kagama*, 118 U.S. 375 (1886), the guardianship responsibility also serves as an extra-constitutional source of authority for Congress to pass legislation affecting Indians.

The federal statutory restraint on alienation of tribal lands is set forth in 25 U.S.C. § 177. In essence, Indian lands cannot be alienated absent federal approval.

There are no grant deeds – only the 1893 Patent signed by President Harrison. Appraisals of the property are not submitted because the real property cannot be alienated for the satisfaction of the existing debt, was never collateral for the existing financing, will not be and will not be pledged as collateral, and thus appraisals served and serve no purpose. The Patent is on file with the federal government, and the Debtor has made a request to the Bureau of Indian Affairs for a copy to submit to the Office of the United States Trustee.

Applicability of the Indian Reorganization Act

The “Indian Reorganization Act,” was enacted on June 18, 1934, at sections 461, 462, 463, 464, 465, 466 to 470, 471, 472, 473, 474, 475, 476 to 478, and 479 of title 25 of the United States Code. The Iipay Nation opted out of the Act. However, later, in a series of subsequent legislative enactments, the Indian Reorganization Act came to apply to the Iipay.

EXHIBIT “A”

IIPAY NATION OF SANTA YSABEL

GAMING ORDINANCE

I. Purpose

The Iipay Nation of Santa Ysabel, acting pursuant to Tribal law in the exercise of its inherent sovereign power to enact ordinances and otherwise safeguard and provide for the health, safety and welfare of the Iipay Nation of Santa Ysabel and its tribal members, hereby ordains and establishes this Ordinance for the purpose of authorizing and comprehensively and preemptively regulating the terms and conditions under which gaming may be conducted within the boundaries of the Santa Ysabel Indian Reservation.

II. Definitions

A. "Class II Gaming" means such gaming as defined in the Indian Gaming Regulatory Act, 25 U.S.C. § 2703 (7) ("IGRA") and by regulations lawfully promulgated by the National Indian Gaming Commission ("NIGC") that now or hereafter may be in effect is hereby authorized.

B. "Class III Gaming" means such gaming as defined in IGRA, 25 U.S.C. Section 2703(8) and by regulations promulgated by the NIGC that now or hereafter may be in effect is hereby authorized provided such gaming is also authorized by and consistent with a Tribal-State Compact that has been approved by the Secretary of the Interior and is in effect or otherwise has been authorized by the Secretary of the Interior or federal law.

C. "Executive Branch" means the Executive Branch of the Tribe's government under the Constitution of the Iipay Nation of Santa Ysabel. Also includes and may refer to the "Tribal Chairman."

D. "Gaming Commission" means the Santa Ysabel Gaming Commission established under the Ordinance. Also referred to as "Commission."

E. "Gaming operation" means the business operation that is authorized by the Tribe to conduct gaming activities on the Santa Ysabel Reservation. Also referred to as "tribal gaming operation."

F. "Gaming Facility" means the building or structure in which tribal gaming activities are conducted.

G. "Gaming Vendor" means vendors who provide gaming supplies and services, including cash-related services.

H. "Key employee" means

1. a person who performs one or more of the following functions:
 - a. Bingo Caller;
 - b. Counting Room Supervisor;
 - c. Chief of Security;
 - d. Custodian of gaming supplies or cash;
 - e. Floor Manager;
 - f. Pit Boss;
 - g. Dealer;
 - h. Croupier;
 - i. Approver of Credit; or
 - j. Custodian of gambling devices including persons with access to cash and accounting records within such devices:
2. If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year: or
3. If not otherwise included, the four (4) most highly compensated persons in the gaming operation; or
4. Any other person designated by the Tribe as a key employee.

I. "Legislative Branch" means the Legislative Branch of the Tribe's government under the Constitution of the Iipay Nation of Santa Ysabel. Also referred to as the "Legislature."

J. "License" means any official, legal and revocable privilege issued by the Gaming Commission pursuant to the Ordinance and regulations.

K. "NIGC" means the National Indian Gaming Commission.

L. "Ordinance" means the Iipay Nation of Santa Ysabel Gaming Ordinance.

M. "Per Capita Payment" means the distribution of money or other thing of value to all members of the Tribe, or to identified group of members, which is paid directly from the net revenues of any tribal gaming activity.

N. "Primary management official" means

1. The person having management responsibility for a management contract;
2. Any person who has authority;
 - a. To hire and fire employees; or
 - b. To set up working policy for the gaming operation; or
3. The chief financial officer or other person who has financial management responsibility; or
4. Any other person designated by the Tribe as a primary management official.

O. "Tribal Lands" means the land of the Iipay Nation of Santa Ysabel and is also referred to as the "Santa Ysabel Indian Reservation."

P. "Tribal-State Compact" means the Tribal-State Compact between the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, a federally recognized Indian Tribe, and the State of California regarding Class III gaming on the Santa Ysabel Reservation. Also referred to as "Compact."

Q. "Tribe" means the Iipay Nation of Santa Ysabel.

III. Gaming Authorized

A. Class II and Class III gaming are hereby authorized on the lands of the Iipay Nation of Santa Ysabel.

B. All authorized gaming on the lands of the Iipay Nation of Santa Ysabel shall be conducted in accordance with applicable federal and tribal laws and regulations and the requirements of the Tribal-State Compact.

IV. Ownership of Gaming Operations

The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation, gaming facilities and gaming enterprises authorized by this Ordinance.

V. Use of Gaming Revenue

A. Except as specifically authorized pursuant to Subsection B of this Section, net revenues from tribal gaming shall be used only for the following purposes:

1. to fund Tribal government operations and programs;
2. provide for the general welfare of the Tribe and its members;
3. promote Tribal economic development;
4. donate to charitable organizations; or
5. help fund operations of local government agencies.

B. If the Tribe elects to make per capita payments to tribal members from revenues derived from its gaming operations, it shall authorize such payments only in conformity with a plan submitted to and approved by the Secretary of the Interior pursuant to 25 U.S.C. §2710(b)(3) and 25 CFR Part 290. The Tribe shall ensure that the interests of minors and other legally incompetent persons who are entitled to receive any per capita payments under a Tribal per capita payment plan are protected and preserved, and that the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare of the minor or legally incompetent person, under a plan approved by the Legislative Branch of the Tribe and the Secretary of the Interior. The Tribe shall establish criteria and process for withdrawal of funds by the parent or legal guardian.

VI. Audit

A. The Tribe shall cause to be conducted at least annually an independent audit of all gaming operations and shall submit the resulting audit reports to the NIGC and to such other agencies as may be required by the terms and conditions of the Tribal-State Compact.

B. All gaming-related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit that is described in subsection A. above.

VII. Protection of the Environment and Public Health and Safety

Gaming facilities shall be constructed maintained and operated in a manner that adequately protects the environment and the public health and safety. The Tribe shall adopt such standards that assure adequate protection of the environment and the public health and safety.

VIII. Licensing

A. Generally A gaming license is a revocable privilege and no holder of a tribal gaming license shall be deemed to have acquired any vested right or property interest as a result of the license. The burden of proving qualifications to hold any license rests at all times on the licensee or applicant. Application for a license pursuant to this Ordinance and acceptance of a gaming license or renewal constitutes an agreement on the part of a licensee to be bound by the tribal gaming laws and regulation, applicable federal law and regulations and the Tribal-State Compact.

B. Gaming Employee Licenses

1. Employees of Class II and Class III Gaming. Every primary management official and every key employee of any Class II or Class III gaming activity subject to this Ordinance shall possess a current, valid gaming employee license.
2. Other Employees Required to be Licensed. Such other employees of the gaming operation or gaming facility, other than those employees identified in B.1. of this section, whom the Gaming Commission may deem as requiring a gaming license, shall be required to possess a current, valid gaming license.
3. License Required. No employee may employed by the gaming operation who does not have a license after ninety (90) days or has not been issued a temporary license pending their background investigation and license suitability determination.

C. Employee Application Forms

1. Form All applicants for primary management official and key employee positions, and applicants for such other positions as deemed necessary for licensure by the Gaming Commission, shall submit an application to the Gaming Commission on such form and in such manner as the Gaming Commission may require.
2. Privacy Notice
 - a. The license application shall also include or be accompanied by a Privacy Act Notice in accordance with 25 C.F.R. §556.2 to be signed by persons applying for a gaming license.

b. The Gaming Commission shall also require existing primary management officials, key employees, and such other employees as designated by the Gaming Commission, to either complete a new application that contains a Privacy Act Notice or sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that Notice.

3. Notice Regarding False Statements.

a. The license application shall also include or be accompanied by a notice regarding false statements in accordance with 25 C.F.R. 556.3 to be signed by persons applying for a gaming license.

b. The Gaming Commission shall also require existing primary management officials, key employees, and such other employees as designated by the Gaming Commission, to either complete a new application that contains a Notice regarding False Statements or sign a statement that contains the Notice of False Statements.

4. License Application Fee. The Gaming Commission may require a non-refundable license application fee be submitted with any application. Such fees may be used to cover the Gaming Commission's expenses in investigating and licensing employees.

D. Background Investigations

1. The Gaming Commission shall request from each primary management official and from each key employee all of the following information:

a. Full name, other names used (oral or written), Social Security number, birth date, place of birth, citizenship, gender, all languages spoken or written;

b. Currently and for the previous five (5) years: all business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license number(s);

c. The names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed under paragraph 1.b. of this Subsection;

- d. Current business and residence telephone numbers;
- e. A description of any existing and previous business relationships or arrangements with the Lipay Nation of Santa Ysabel, or any other Indian Tribe, including ownership interests in those businesses, and including the name of the tribe involved and the name and address of a person who can attest to the accuracy of the information provided;
- f. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
- g. The name and address of every licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- h. For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;
- i. For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved and the date and disposition;
- j. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to paragraph 1.h. or 1.i. of this Subsection, the criminal charge, the name and address of the court involved and the date and disposition;
- k. The name and address of each licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
- l. A current photograph;
- m. Any other information the Gaming Commission may deem relevant under the circumstances.

2. As part of the license application procedure, each applicant for a key employee or primary management official position, and such other positions as deemed necessary by the Gaming Commission, shall have fingerprints taken in accordance with procedures adopted by the Gaming Commission consistent with 25 CFR §522.2(h). Fingerprints shall be taken by the San Diego County Sheriff's Department or other local police agency. The fingerprint cards shall be forwarded to the NIGC for processing through the FBI and NCIC, pursuant to a Memorandum of Understanding between the Tribe and the NIGC, to determine the applicant's criminal history, if any.

a. If the applicant lived outside the United States for more than six (6) months during the preceding ten (10) years the Gaming Commission shall also submit the applicant's vital information to INTERPOL and request an international criminal history report for the applicant.

3. The Gaming Commission shall conduct an investigation sufficient to make a determination under Subsection E. below. In conducting a background investigation, the Gaming Commission or its agent(s) shall:

a. ensure that all records and information obtained as a result of the background investigation shall remain confidential and shall not be disclosed to persons who are not directly involved in the licensing process. This restriction does not apply to request for information or records from any duly authorized tribal, federal or state law enforcement or regulatory agency, or for the use of such information or records by the Gaming Commission and staff in performance of their official duties;

b. keep confidential the identity of each person interviewed in the course of the investigation.

E. Suitability Determination The Gaming Commission shall review an applicant's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the suitability of a key employee, primary management official or other individual for granting of a gaming license. If the Gaming Commission determines that licensing of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, the Gaming Commission shall not license that person in a key employee or primary management official position or such other position requiring a gaming license.

F. Procedures for Forwarding Applications and Investigative Reports for Key Employees and Primary Management Officials to the NIGC

1. When a key employee or primary management official begins work at a tribal gaming operation, the Gaming Commission shall forward to the NIGC a completed application for employment and conduct the background investigation and make the determination referred to in Subsection E of this Section.
2. The Gaming Commission shall forward the investigative report referred to in Subsection G of this Section to the NIGC within sixty (60) days after an employee begins work.
3. The gaming operation shall not employ as a key employee or primary management official a person who does not have a license after ninety (90) days.

G. Investigative Report to the NIGC

1. Pursuant to the procedures set out in Subsection D of this Section, the Gaming Commission shall prepare and forward an investigative report on each background investigation to the NIGC. An investigative report shall include all of the following:
 - a. Steps taken in conducting the background investigation;
 - b. Results obtained;
 - c. Conclusions reached; and
 - d. The basis for those conclusions.
2. The Gaming Commission shall submit with the investigative report a copy of the suitability determination made under Subsection E of this Section.
3. If a license is not issued to an applicant, the Gaming Commission:
 - a. shall notify the NIGC; and
 - b. may forward copies of its suitability determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.
4. With respect to key employees and primary management officials, the Gaming Commission shall retain applications for employment and investigative reports (if any) of background investigations for inspection by the Chairman of

the NIGC for no less than three (3) years from the date of termination or denial of employment.

H. Granting a Gaming License

1. If within thirty (30) days after the NIGC receives an investigative report, the NIGC notifies the Gaming Commission that it has no objection to the issuance of a license to the individual who is the subject of the investigative report, the Gaming Commission may issue a license to such applicant.
2. The Gaming Commission shall respond to a request for additional information from the NIGC concerning a key employee or a primary management official who is the subject of an investigative report. Such a request shall suspend the thirty (30) day period under Subsection H.1. of this Section until the NIGC receives the additional information.
3. If, within the thirty (30) day period described above, the NIGC provides the Gaming Commission with a statement itemizing its objection(s) to the issuance of a license to a key employee or a primary management official for whom the Gaming Commission an application and investigative report, Gaming Commission shall reconsider the application taking into account the objection(s) itemized by the NIGC. The Gaming Commission shall make the final decision whether to issue a license to such applicant.

I. Conditional License

1. The Gaming Commission, in its discretion, may issue a license with conditions or impose conditions on an existing license. Such conditions shall be specific to allow proper monitoring by the Gaming Commission to ensure the licensee is complying with the conditions imposed by the Gaming Commission. Failure of the licensee to comply with the conditions may result in immediate suspension or revocation of the license, depending upon the facts surrounding the failure to comply.
2. If the Gaming Commission issues a conditional license or imposes conditions on an existing license, the Gaming Commission shall give the licensee written notice specifying the grounds for the conditions and that the licensee's continued licensure is contingent upon compliance with the imposed conditions.

J. License Suspension

1. The Gaming Commission may suspend a gaming license for a specified period, after notice an opportunity for a hearing, upon a determination that a temporary suspension is warranted or that a licensee is unsuitable for continued licensure based on reliable information from any source, including, but not limited to the NIGC.
2. If the Gaming Commission determines that immediate temporary suspension of the gaming license is necessary based upon the facts before it, the Gaming Commission may immediately suspend the license and give notice to the licensee of the immediate suspension and an opportunity for a hearing.
3. In some instances of a serious nature, the Gaming Commission may determine that suspension is a preliminary step toward revocation and take actions toward revoking the license.

K. License Revocation

1. The Gaming Commission may revoke a gaming license, after notice an opportunity for a hearing, upon a determination that a licensee is unsuitable for continued licensing based on reliable information from any source, including, but not limited to the NIGC.
2. If the Gaming Commission determines that immediate revocation of a license is necessary based upon the facts before it, the Gaming Commission may immediately revoke the license and is not required to suspend the license prior to taking any revocation action. The Gaming Commission shall provide notice of the immediate revocation to the licensee and an opportunity for a hearing.
3. The Gaming Commission shall notify the NIGC of its decision.

IX. Licensing of Gaming Facilities and Locations

A separate license shall be required for each place, facility or location on the Santa Ysabel Reservation where Class II and/or Class III gaming is conducted under this Ordinance.

X. Licensing of Gaming Vendors and Other Entities

A. The Gaming Commission shall require the following to be licensed in order to transact business with the gaming operation:

1. any person or entity that supplies or proposes to supply any goods or services provided or used in connection with gaming activities with a value of \$25,000 or more in any twelve (12) month period;
2. any person or entity that supplies gaming devices;
3. any person or entity doing business or proposing to do business with the gaming operation that the Gaming Commission deems necessary, including a non-gaming vendor.

B. The Gaming Commission shall develop a vendor application form that shall request such information, including but not limited to financial records, sufficient to allow the Commission or its agent to conduct a background investigation and make a suitability determination for issuing a vendor license.

C. The Gaming Commission reserves the right to require non-gaming related vendors to register with the Gaming Commission.

D. The Gaming Commission shall develop such regulations as deemed necessary to effect the licensing and registration of vendors under this section.

XI. Santa Ysabel Gaming Commission

A. The Tribe hereby establishes the Santa Ysabel Gaming Commission, which shall serve as the Tribe's regulatory agency with sole responsibility to monitor and regulate all gaming authorized under this Ordinance. The purpose the Gaming Commission is regulatory, not managerial.

B. The Gaming Commission shall consist of at least one (1) Commissioner but no more than three (3) Commissioners, with at least one of whom would qualify for licensing under this Ordinance. There shall be a Chairperson of the Gaming Commission, who shall be appointed for a term of two (2) years. The remaining members of the Commission shall be appointed for terms of one (1) year. The members of the Gaming Commission shall be appointed by the Tribe's Chairman, subject to the confirmation by the Legislature. None of the Commissioners shall be employees of the gaming operation, members of the Tribe's enterprise boards, or members of the Legislature.

1. The Gaming Commissioners shall be compensated at a level determined by the Executive Branch.

C. The Commission shall prepare an annual operating budget for all Commission activities, including personnel, and present it to the Executive Branch for approval.

1. Subject to the approval of the Executive Branch and the appropriation of funds therefore, the Gaming Commission shall be authorized to employ such staff as reasonably may be required to fulfill its responsibilities under this Ordinance. Compensation of Commission employees shall be limited to that which is comparable to compensation paid to persons performing similar duties in other governmental gaming regulatory agencies.

D. A majority of the Commissioners shall constitute a quorum for the transaction of business. However, the Commission may act in its official capacity even if there are vacancies on the Commission.

E. Vacancies and Removal of Commissioners.

1. Vacancies. If a Commissioner becomes disabled or is unable to perform in the capacity of a Commissioner, or resigns before the expiration of his or her term, the Tribal Chairman shall select a successor, subject to confirmation by the Legislature, to serve for the balance of the term. In the case of resignation, a Commissioner shall continue in office until his or her successor has been selected and confirmed.

2. Removal. A Commissioner may be removed by the Legislature for the good cause only and upon an affirmative vote of at least four (4) members of the Legislature. The following are examples of good cause for removal: neglect of duty, malfeasance, misconduct in office or any conduct which threatens the honesty and integrity of the Gaming Commission, renders a Commissioner unqualified for his or her position, or otherwise violates this Ordinance. No Commissioner may be removed without notice and an opportunity for a hearing before the Legislature upon at least ten (10) days prior before the scheduled hearing. Such notice shall also state the specific reason(s) for the removal action. The Commission member shall have the right to hear and present evidence concerning his or her removal. The Commission member may request that the hearing may be held in executive session. The Legislature may also elect to elect to receive in executive session any evidence public disclosure of which might compromise any on-going law-enforcement investigation, or which might jeopardize any privilege or immunity possessed by the Tribe. The decision of the Legislature on the removal of the Commissioner shall be final.

3. Immediate Suspension. If the Legislature determines that immediate suspension of a Commissioner is necessary to protect the interests of the Tribe, the Legislature may hold a hearing with the Commissioner to suspend the Commissioner temporarily, and the question of permanent removal shall be determined thereafter pursuant to the hearing procedures in section E.2.

F. Authority and Responsibility In furtherance of, but not in limitation of, the Gaming Commission's purposes and responsibilities, the Gaming Commission shall have the authority and responsibility to do the following:

1. Inspect, monitor and regulate all gaming activities on tribal lands authorized by this Ordinance.
2. Perform the regulatory functions and responsibilities required of the Tribe and the Gaming Commission, as the tribal gaming regulatory agency, under the IGRA, NIGC regulations, federal and tribal laws and regulations, and the Tribal-State Compact, and ensure compliance with the same.
3. Enforce and administer the provisions of this Ordinance and any regulations promulgated by the Gaming Commission.
4. Investigate any reported or discovered violations of this Ordinance, the IGRA, NIGC regulations, federal or tribal law or regulations or the Tribal-State Compact regarding gaming within the jurisdiction of the Tribe.
5. Have immediate and unrestricted access to all areas of the gaming facility during all hours of gaming activities, including the books and records of the gaming operation, to carry out the Gaming Commission's regulatory functions.
6. Develop procedures and any supplementary criteria for licensing for all persons, entities or gaming facilities required to be licensed under the IGRA, NIGC regulations, tribal laws and regulations, and the Tribal-State Compact.
7. Issue or renew tribal gaming licenses for employees, vendors and gaming facilities.
8. Conduct background investigations and render suitability determinations for individuals or entities required to obtain a gaming license.
9. Revoke, suspend or condition a gaming license for violations of IGRA, NIGC regulations, tribal laws and regulations, and the Tribal-State Compact.

10. Conduct hearings as provided for in this Ordinance and regulations promulgated by the Gaming Commission.
11. Inspect and examine any Tribal gaming facility constructed, maintained, and operated on tribal lands to determine compliance with applicable requirements as to the environment, public health and safety.
12. Establish or approve minimum internal control standards (MICS) for the gaming operation.
13. Establish and collect license application fees to cover the costs for investigation and licensing and fulfilling its regulatory responsibilities. All such fees shall be collected by Gaming Commission and used for the purposes enumerated in this Subsection.
14. Levy and collect penalties and fines that may be provided for in this Ordinance and regulations promulgated by the Gaming Commission.
15. Establish or approve the gaming operation's policy and procedure for handling patron disputes.
16. Consult with and make recommendations to the Legislature regarding changes in tribal gaming laws and policies.
17. Take such other actions as the Gaming Commission may deem necessary to fully and properly perform its duties and responsibilities under this Ordinance.

G. Regulations. The Gaming Commission is authorized and directed to adopt regulations as necessary to effectuate the provisions of this Ordinance, other applicable federal and tribal laws and regulations, and the provisions of the Tribal-State Compact. Such regulations shall be promulgated in accordance with legislative due process which includes submission to the Executive Branch and the Legislature for review and comment prior to final approval by the Gaming Commission.

XII. Enforcement

A. Generally. Any person or licensee who is in violation of this Ordinance or any applicable federal, tribal and state law or regulation, or Compact, shall be subject to enforcement action by the Gaming Commission.

B. The Gaming Commission may issue the following types of action against a person or licensee, but is not required to follow any particular succession when taking disciplinary action and may issue more than one type of enforcement action depending on the violation:

1. Conditions Placed on License;
2. Suspension of License;
3. Revocation of License;
4. Civil Penalties;
5. Exclusion from the gaming facility or operation.
6. Such other sanctions or penalty as the Gaming Commission may deem appropriate.

C. Any person or entity subject to any enforcement, sanction or penalty by the Gaming Commission shall have the right to appeal such enforcement action, sanction or penalty in accordance with such rules and regulations as may be promulgated by the Gaming Commission.

XIII. Amendments

This Ordinance may be amended in any manner deemed appropriate to protect what the Legislature determines to be the best interests of the Santa Ysabel Tribe; provided, that an amendment to this Ordinance shall not be less restrictive than the original terms of this Ordinance, or that would constitute a violation of federal law or would be inconsistent with the terms of an approved Tribal-State Compact that is then in effect.

XIV. Severability

In the event that any section or provision of this Ordinance is held invalid, it is the intent of the Legislature that the remaining sections or provisions of this Ordinance shall continue in full force and effect.

XV. Repeal

To the extent that they are inconsistent with this Ordinance, all gaming ordinances previously enacted or amended by the Legislature or General Council are hereby repealed.

EXHIBIT “B”

DAVID BUTLER
RECORDER/COUNTY CLERK
COUNTY OF SAN DIEGO

1600 PACIFIC HIGHWAY, SUITE 260
P.O. BOX 121750, SAN DIEGO, CA 92112-1750
(619) 237-0502

2010-015809



JUN-08-2010

JUN 16 2010

FILED

DAVID L. BUTLER
SAN DIEGO COUNTY CLERKFEES: 45.00
EXPIRES: JUN-08-2015
DEPUTY: JBURKETT

PLEASE PRINT/TYPE INFORMATION
AND RETURN ENTIRE FORM

SELECTED COPIES:

NEWSPAPER ☐ Yes ☐ No
CUSTOMER ☐ Yes ☐ No

Each Copy is \$2.00 Extra

FORM INSTRUCTIONS ON BACK

\$30.00- FOR FIRST BUSINESS NAME ON STATEMENT
\$5.00- FOR EACH ADDITIONAL BUSINESS NAME
FILED ON SAME STATEMENT AND DOING
BUSINESS AT THE SAME LOCATION
\$5.00- FOR EACH ADDITIONAL OWNER IN EXCESS
OF ONE OWNER

FICTITIOUS BUSINESS NAME STATEMENT

(1) FICTITIOUS BUSINESS NAME(S):

a. SANTA YSABEL GAMING ENTERPRISEb. SANTA YSABEL RESORT AND CASINO

(2) LOCATED AT: 25575 HWY 79 / SANTA YSABEL CA / SAN DIEGO / 92070
Street Address (P.O. Box not acceptable) City State COUNTY Zip

Mailing Address: P.O. Box 600 SANTA YSABEL, CA - 92070
(Optional)

(3) THIS BUSINESS IS CONDUCTED BY:

- ☐ A. An Individual ☐ E. Joint Venture ☐ I. A Limited Liability Company
☐ B. Husband and Wife ☐ F. A Corporation ☐ J. Limited Liability Partnership
☐ C. A General Partnership ☐ G. A Trust ☒ K. An Unincorporated Association-Other than a Partnership
☐ D. A Limited Partnership ☐ H. Co-Partners ☐ L. State or Local Registered Domestic Partners

(4) THE FIRST DAY OF BUSINESS WAS: 4 / 11 / 2007 OR IF NOT YET STARTED, CHECK HERE ☐

(5) THIS BUSINESS IS HEREBY REGISTERED BY THE FOLLOWING:

#1 SANTA YSABEL BAND OF DIEGUENO INDIANS

Owner's, Partner's, Trustee's Name or Corporation/LLC Name

100 HWY 79 + SCHOOL HOUSE CANYON RD.

Residence/Corporation/LLC Street Address/PO Box not allowed

SANTA YSABEL CA. 92070

City State Zip

Corporation or LLC - Print STATE of Incorporation/Organization

#2 JOHNNY HERNANDEZ

Owner's, Partner's, Trustee's Name or Corporation/LLC Name

100 HWY 79 + SCHOOL HOUSE CANYON RD.

Residence/Corporation/LLC Street Address/PO Box not allowed

SANTA YSABEL CA. 92070

City State Zip

Corporation or LLC - Print STATE of Incorporation/Organization

#3 BRANDIE TAYLOR

Owner's, Partner's, Trustee's Name or Corporation/LLC Name

100 HWY 79 + SCHOOL HOUSE CANYON RD.

Residence/Corporation/LLC Street Address/PO Box not allowed

SANTA YSABEL CA. 92070

City State Zip

Corporation or LLC - Print STATE of Incorporation/Organization

#4

Owner's, Partner's, Trustee's Name or Corporation/LLC Name

Residence/Corporation/LLC Street Address/PO Box not allowed

City State Zip

Corporation or LLC - Print STATE of Incorporation/Organization

I declare that all information in this statement is true and correct. (A registrant who declares as true information which he or she knows to be false is guilty of a crime.)

(6)

(Signature of Registrant)

JOHNNY M. HERNANDEZ

(Print name)

TRIBAL CHAIRMAN

(Corp./LLC print Title)

THIS STATEMENT WAS FILED WITH THE RECORDER/COUNTY CLERK OF SAN DIEGO COUNTY AS INDICATED BY THE FILE STAMP ABOVE.
NOTICE - THIS FICTITIOUS NAME STATEMENT EXPIRES FIVE (5) YEARS FROM THE DATE IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK. A NEW
FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THAT TIME.
THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF
ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14411 ET SEQ., BUSINESS AND PROFESSIONS CODE).
IT IS THE RESPONSIBILITY OF THE REGISTRANT TO DETERMINE THAT THE FICTITIOUS BUSINESS NAME SELECTED WILL NOT VIOLATE
ANOTHER'S RIGHTS ESTABLISHED UNDER THE LAW.

EXHIBIT “C”

APR-27-2012 04:39

IRS

8016205372

P.02/02



Department of the Treasury
Internal Revenue Service
Ogden, UT 84201

In reply refer to: 0448580587
Apr 27, 2012 LTR 147C
20-1366478

SANTA YSABEL GAMING ENTERPRISE
SANTA YSABEL RESORT & CASINO
% PHIL PEPPLER
25575 HIGHWAY 79
SANTA YSABEL CA 92070-0000 000

Taxpayer Identification Number: 20-1366478

Form(s):

Dear Taxpayer:

This letter is in response to your telephone inquiry of April 27th, 2012.

Your Employer Identification Number (EIN) is 20-1366478. Please keep this number in your permanent records. You should enter your name and your EIN, exactly as shown above, on all business federal tax forms that require its use, and on any related correspondence documents.

If you have any questions regarding this letter, please call our Customer Service Department at 1-800-829-0115 between the hours of 7:00 AM and 10:00 PM. If you prefer, you may write to us at the address shown at the top of the first page of this letter. When you write, please include a telephone number where you may be reached and the best time to call.

Sincerely,

Mr. Greenwood
1000779043
Customer Service Representative

MARY TESTERMAN DUVOISIN, ATTORNEY #163514
TRIAL ATTORNEY
OFFICE OF THE UNITED STATES TRUSTEE
402 WEST BROADWAY, SUITE 600
SAN DIEGO, CA 92101-8511
(619) 557-5013

Attorney for
TIFFANY L. CARROLL
ACTING UNITED STATES TRUSTEE

UNITED STATES BANKRUPTCY COURT

Southern District of California

In re)	Case No. 12-09415-PB11
)	
SANTA YSABEL RESORT)	PROOF OF SERVICE
and CASINO,)	
)	
Debtor.)	

I, Marika T. Bigbie-Cerwin, DECLARE AS FOLLOWS:

I am a resident of and employed in the state of California, County of San Diego, I am over the age of 18 years and not a party to the above-entitled action. On **August 7, 2012**, I served a true copy of the following document(s):

1. UNITED STATES TRUSTEE'S NOTICE OF HEARING AND MOTION
2. ACTING UNITED STATES TRUSTEE'S MOTION TO DISMISS CASE
3. DECLARATION OF SHANNON VENCILL IN SUPPORT OF THE ACTING UNITED STATES TRUSTEE'S MOTION TO DISMISS CASE

on the parties in this action as follows:

☒ BY CM/ECF NOTICE OF ELECTRONIC FILING by causing such document(s) listed above to be served through this Court's electronic transmission facilities via the Notice of Electronic Filing (NEF) and hyperlink, to the parties and/or counsel who are determined this date to be registered CM/ECF Users set forth below as identified on the service list obtained from this Court on the Electronic Mail Notice List.

Ron Bender	rb@lnbyb.com
Peter L. Duncan	theresam@psdslaw.com
Richard W. Havel	rhavel@sidley.com
Eric George	egeorge@bgrfirm.com
Ira Bibbero	ibibbero@bgrfirm.com

////

////

1 All other interested parties in this action that are not a registered ECF User are served as
2 follows:

3 ☒ BY U.S. Mail by placing the document(s) listed above in a sealed envelope with postage
4 thereon fully prepaid, in the United States Mail at San Diego, California addressed as set forth
5 below.


6 **SEE ATTACHED PROOF OF SERVICE LIST**

7 ☐ BY OVERNIGHT DELIVERY by causing such envelope(s) to be deposited in a box or
8 other facility regularly maintained by Federal Express overnight delivery with fees paid.

9 ☐ BY ELECTRONIC SERVICE by causing document(s) to be electronically served on the
10 interested parties in the above-referenced action. The transmission was reported as complete
11 without error and a copy of the report will be maintained with the document by the sender.

12 ☐ BY FACSIMILE by causing the foregoing document(s) via facsimile transmission. The
13 transmission was reported as complete without error and a copy of the report will be maintained
14 with the document by the sender.

15 I declare under penalty of perjury that the documents were served by methods indicated
16 above and the foregoing is true and correct. Executed on **August 7, 2012** at San Diego,
17 California.

18 
19 /s/ Marika T. Bigbie-Cerwin
20 Marika T. Bigbie-Cerwin
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Santa Ysabel Resort and Casino
Case No. 12-09415-PB11
PROOF OF SERVICE LIST

Santa Ysabel Resort and Casino
Post Office Box 600
Santa Ysabel CA 92070

Ron Bender, Esquire
LEVENE NEALE BENDER YOO & BRI
10250 Constellation Boulevard
Suite 1700
Los Angeles CA 90067

Internal Revenue Service
Post Office Box 7346
Philadelphia, PA 19101-7346

Internal Revenue Service
Insolvency Group 1
880 Front Street
San Diego, CA 92101

Request for Special Notice

Peter L. Duncan, Esquire
PYLE SIMS DUNCAN & STEVENSON
401 "B" Street
Suite 1500
San Diego CA 92101-4238

Richard W. Havel, Esquire
SIDLEY AUSTIN LLP
555 West Fifth Street
Suite 4000
Los Angeles CA 90013

Eric George, Esquire
BROWN GEORGE ROSS LLP
2121 Avenue of the Stars
Suite 2400
Los Angeles CA 90067