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3rd Civil No. C091801

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

YAVAPAI-APACHE NATION, a federally recognized Indian tribe

Plaintiff, Respondent and Cross-Appellant,

vs.

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

Defendant, Appellant, and Cross-Respondent.

APPELLANT'S REPLY BRIEF

Appeal from the Superior Court for the County of Sacramento, Case No. 34-2018-00238711-CU-MC-GDS
The Honorable David I. Brown

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INTRODUCTION

Respondent-Petitioner Yavapai-Apache Nation ("YAN"), an made a bad investment. Rather than lose its investment, YAN has spent nearly a decade trying to blame Appellant-Defendant La Posta Band of Diegueno Mission Indians ("La Posta") for its folly. But La Posta understood the risks with this economic development effort, and La Posta negotiated protections of certain assets from the transaction—assets necessary to maintain the Tribe's very existence. YAN hopes to ignore the deal's terms and seize everything from La Posta forever. This Court already affirmatively resolved this with *La Posta I*.[1] This Court should not allow YAN to repackage issues already decided to seize tribal government assets indiscriminately.

There are two possible outcomes to this dispute: (1) either California will not recognize the YAN Judgment[2] and this matter is dismissed, *or* (2) California will recognize the YAN Judgment and Respondent-Petitioner Yavapai-Apache Nation ("YAN") is entitled to a deficiency judgment of $262,081 and "Excluded Assets" remain excluded.[3]

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[1] Consistent with its Opening Brief, La Posta will use the same short-form terminology. Here, *La Posta I* refers to *Yavapai-Apache Nation v. La Posta Band of Diegueno Mission Indians* (No. D069556, Cal. Ct. App. June 28, 2017), 2017 WL 2791671, in the record at 2 LP 323-365. Westlaw page numbers are cited in the brief.

[2] "YAN Judgment" refers to the judgment issued following *Yavapai-Apache Nation v. La Posta Band of Diegueno Mission Indians*, Yavapai-Apache Tribal Court, 2015, No. CV-2015-00023, referred to as the "YAN Court Action," 2 LP 374-384. (1 LP 144-160)

[3] Excluded Assets are described in the Second Amended and Restated Loan Agreement ("SARLA"), § 13.04, in pertinent part: "In any action or proceeding against [La Posta] to enforce the Loan Documents, [YAN] agrees that it shall have no recourse against any Excluded Assets . . . THE LIENS OF [YAN] ARE LIMITED TO THE COLLATERAL SPECIFICALLY REFERRED TO IN THE COLLATERAL DOCUMENTS DESCRIBED HEREIN AND ANY OTHER COLLATERAL SPECIFICALLY PLEDGED TO THE PAYMENT OF THE OBLIGATIONS." (1 LP 114; capitalization in original.)

While La Posta maintains that the TCCMJA[4] and the doctrine of comity bar recognition of the YAN Judgment, if recognizing the YAN Judgment was not an error and YAN can rely on it as a finding of fraud in the Sacramento Action,[5] then the clear language of the limited waiver of tribal sovereign immunity in SARLA § 13.03(a) only allows YAN a deficiency judgment for the damages determined in the San Diego Action[6] and stipulated to in YAN Court Action. (1 LP 113; 2 LP 563; 1 LP 158.) Even then, such a deficiency judgment cannot be collected against Excluded Assets, including the RSTF, based on the plain language of the SARLA and the parties' express agreement. (1 LP 114.)

YAN believes it can simply attach an out-of-state judgment to its complaint and assert it is necessary for YAN's relief, and in the very same breath argue that it is *not* seeking recognition of that same out-of-state judgment. This is the core of YAN's position, repeated like a mantra: "YAN has nowhere sought to have the [YAN] Judgment recognized, entered, enforced, or registered." (Respondent Yavapai-Apache Nation's Brief ("Opposition" and "Opp."), p. 20; emphasis removed.) "Why would it," YAN questions rhetorically, "when the [YAN] Judgment is for just over $262,000 while the San Diego judgment is for nearly $49 million?" (Opp. p. 17.) YAN then explains, "YAN has sought to give effect only to the [] non-monetary finding of fraud." *Id*.

The obvious flaw in YAN's position is that out-of-state tribal judgments must be reviewed and deemed entitled to recognition in a California court – either through principles of comity, or here, the TCCMJA. Despite YAN's anger, sarcasm, and illogical

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[4] Tribal Court Civil Money Judgment Act ("TCCMJA"), Code of Civil Procedure ("Code") § 1730 *et seq*.

[5] "Sacramento Action" refers to *Yavapai-Apache Nation v. La Posta Band of Diegueno Mission Indians*, Super. Ct. Sacramento County, 2016, No. 2016-00189229-CU-IP.

[6] "San Diego Action" refers to *Yavapai-Apache Nation v. La Posta Band of Diegueno Mission Indians*, Super. Ct. San Diego County, 2013, No. 37–2013–00048045–CU–BC–CTL.

contortions to somehow shield the YAN Judgment from review, it cannot avoid judicial consideration of the YAN Judgment's patent unfairness.

YAN's brief left several of La Posta's key arguments unanswered and unchallenged, presumably because YAN cannot defend its efforts to piece together judgments from a multi-jurisdictional monster, let alone defeat La Posta's arguments. For example, YAN has not addressed (i) La Posta's explanation that the contract provision in dispute is a *limited* waiver of tribal sovereign immunity; (ii) its clarification that the limited waiver only waives immunity *for a deficiency judgment*; (iii) the recognition that Code § 1060 only authorizes a declaratory judgment between parties to a contract; (iv) that the YAN Judgment is, by definition (Code § 1732(g)), a tribal court money judgment; and (v) the record shows the parties agreed the RSTF was never pledged as security.

When YAN did argue, YAN missed the mark. For example, YAN's judicial estoppel argument (Opp. p. 40-41) misunderstands the difference between the Sacramento Judgment and the YAN Judgment—YAN argues that judicial estoppel prevents La Posta from arguing *the TCCMJA applies to the YAN Judgment* because La Posta successfully argued that *the Sacramento Judgment is declaratory* and not monetary (to stay enforcement). These are two entirely separate issues. And YAN spends significant time arguing that La Posta had its "day in court" in YAN Court Action (Opp. p. 51) but ignores the comparable and paramount fact that YAN, too, had its day in court in San Diego[7] which resulted in a judgment that was upheld by this Court and should serve to foreclose YAN's second and third lawsuits.

Ultimately, this Court's *de novo* review is of the multiple errors and abuses in the Sacramento Action. The primary error is the recognition of the YAN Judgment, the penultimate is the misinterpretation of the limited immunity wavier. And a pervasive

[7] And again before this Court in *La Posta I*, and then again in YAN Court, and again in the Sacramento Action.

error is the Sacramento Court's oversight of this Court's decision in *La Posta I.* These can all be resolved here.

This Court should find that the YAN Judgment cannot be recognized by any California court and remand the matter with instructions to strike the YAN Judgment and vacate or modify any orders and judgments dependent on the YAN Judgment. At the very least, the Court should remand and require formal analysis under either the TCCMJA or principles of comity.

Alternatively, if this Court finds that the YAN Judgment may be recognized in California, then it should remand the matter with instructions to modify the declaratory judgment to explain that La Posta is only obligated to pay YAN deficiency judgment damages of $262,081, as determined in the San Diego Action, from funds that do not constitute Excluded Assets, including the RSTF.

ARGUMENT

I. This is an appeal following summary judgment. A *de novo* review applies. But other standards may apply to specific areas of the review.

Each of La Posta's several arguments calls for a *de novo* review.

The parties agree "[t]his Court reviews a trial court's order granting summary judgment *de novo*." *Scheiding v. Dinwiddie Construction Co*. (1999) 69 Cal.App.4th 64, 69); see Opp. p. 28 ("La Posta's statement of the standard of review governing summary judgment is correct, as far as it goes.").

Considering the interpretation and application of the TCCMJA, a "question of statutory construction" is reviewed *de novo*. *O'Brien v. AMBS Diagnostics, LLC* (2016) 246 Cal.App.4th 942, 947. And "the interpretation and application of a statute to undisputed facts is a question of law subject to *de novo* review." *State ex rel. Aetna Health of California, Inc. v. Pain Management Specialist Medical Group* (2020) 58 Cal.App.5th 1064.; citing *People ex rel. Allstate Ins. Co. v. Weitzman* (2003) 107 Cal.App.4th 534, 543-544. An abuse of discretion standard would apply had the Sacramento Court applied the TCCMJA erroneously, but the Sacramento Court refused to apply the law. (2 LP 665-666.)

The same *de novo* standard applies to the application of Code Civ. Proc. § 1060 to the CGCC.[8] *Gilb v. Chiang* (2010) 186 Cal.App.4th 444, 457. Very simply, the CGCC is not a party to the SARLA so Code § 1060 cannot be used to declare the rights of the CGCC under the SARLA.

The "[e]xtension or denial of comity is discretionary and is reviewed on an abuse of discretion standard," *In re Stephanie M*. (1994) 7 Cal.4th 295, 314, as modified on denial of reh'g (May 12, 1994), and "the interpretation of another court's judgment and the determination of a judgment's preclusive effect are generally questions of law we review *de novo*." *Societe Civile Succession Richard Guino v. Redstar Corp*. (2007) 153 Cal.App.4th 697, 701.

Res judicata and collateral estoppel, both call for a *de novo* review. *Association of Irritated Residents v. Department of Conservation* (2017) 11 Cal.App.5th 1202, 1218 (*de novo* review of res judicata); *Williams v. U.S. Bancorp Investments, Inc.* (2020) 50 Cal.App.5th 111, 119, review denied (Sept. 9, 2020) (*de novo* review of collateral estoppel). La Posta's premise here is that the Sacramento Court ignored the fundamental authority that required YAN to bring all of its claims in San Diego, but even considering YAN's failure to do so, *La Posta I* confirms that the California Jury Verdict denies any species of fraud based on the Forbearance Request.[9]

Finally, limited waivers of tribal sovereign immunity and contract interpretation of the SARLA go hand in hand, and both are reviewed *de novo*. *Self v. Cher-Ae Heights Indian Community of Trinidad Rancheria* (Cal. Ct. App., Jan. 26, 2021, No. A158632) – Cal Rptr. 3d --, 2021 WL 248813, at *3; see also *Warburton/Buttner v. Superior Court* (2002) 103 Cal.App.4th 1170, 1180 ("[T]he issue of whether an Indian tribe has waived its sovereign immunity, and thus whether a court has subject matter jurisdiction over an

[8] "CGCC" refers to Defendant California Gambling Control Commission.

[9] The Forbearance Request is described on pp. 18-19 of the Opening Brief: "[O]n October 7, 2009, [La Posta] sought a four-month forbearance on La Posta's obligation to make payments . . . under the SARLA to "allow further time for Casino management to consider implementation of the findings of [a casino consultant]." (2 LP 480-481.)

action against the tribe, is a question of law subject to *de novo* review."); *DFS Group, L.P. v. County of San Mateo* (2019) 31 Cal.App.5th 1059, 1079, review denied (Apr. 24, 2019) ("[C]ontract interpretation is an issue of law, which we review *de novo*, including where undisputed parol evidence sheds light on the parties' intent."); *Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 913 ("Likewise, we review a trial court's interpretation of a contract *de novo* where the contractual interpretation is based solely upon the terms of the written instrument.").

II. La Posta explained that SARLA § 13.03(a) is a *limited* waiver of tribal sovereign immunity.

SARLA § 13.03(a) is reciprocal limited waiver of tribal sovereign immunity whereby YAN and La Posta each waive immunity to allow suit with respect to the SARLA. (1 LP 113.) Because the Sacramento Judgment exceeds the limits of La Posta's immunity waiver, the Sacramento Court exceeded its subject matter jurisdiction. [10]

Relevant here, the limited waiver contains these key limitations:

- La Posta's waiver is limited to only allow recovery against the Collateral in a manner consistent with § 13.04;
- Notwithstanding the limited waiver to allow suit with respect to the SARLA, the waiver allows suit in three other specific circumstances;

[10] This Court has free reign to resolve the case on immunity grounds. La Posta identified the limited waiver in its opposition to YAN's motion for summary judgment. (7 LP 1516, 1525.) And more, absent a waiver, the courts do not have subject matter jurisdiction over suits against a tribe. See *Lawrence v. Barona Valley Ranch Resort & Casino* (2007) 153 Cal.App.4th 1364, 1368; see also *Warburton/Buttner v. Superior Court* (2002) 103 Cal.App.4th 1170, 1182 ("[S]overeign immunity is not a discretionary doctrine that may be applied as a remedy depending on the equities of a given situation. Rather, it presents a pure jurisdictional question.") The general rule is "subject matter jurisdiction can be challenged at any time during the course of an action. *Great Western Casinos, Inc. v. Morongo Band of Mission Indians* (1999) 74 Cal.App.4th 1407, 1417–1418. Accordingly, "[i]f the lack of subject matter jurisdiction can be raised at any time, it seems to follow no specified procedural vehicle should be required to bring the matter to the court's attention." *Id*.

- In those three specific circumstances, La Posta's waiver is limited to allow a deficiency judgment to claw back the amount of improperly withheld Collateral and, or alternatively for, damages from and after a finding of fraud.

(1 LP 113). La Posta raised these limits in its opening brief. (Opening § IV.) YAN never opposed these limits to the waiver below or here. The Sacramento Court, however, ignored the limits requiring reversal.

Certainly YAN aware that federally recognized Indian tribes possess the common-law immunity from suit traditionally enjoyed by sovereign powers. *Great Western Casinos, Inc. v. Morongo Band of Mission Indians* (1999) 74 Cal.App.4th 1407, 1419. Tribal sovereign immunity is both from liability and from suit. *Lawrence v. Barona Valley Ranch Resort & Casino* (2007) 153 Cal.App.4th 1364, 1368. "Pursuant to tribal sovereign immunity principles, an Indian tribe is subject to suit only where Congress has so authorized or where the [t]ribe has waived its immunity by consenting to suit." *Id*.

And every Indian tribe knows that "[i]t is settled that a waiver of sovereign immunity 'cannot be implied but must be unequivocally expressed.'" *Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 58-59. When a waiver is given, "any conditional limitation imposed thereon must be strictly construed and applied." *Lawrence,*153 Cal.App.4th at 1369; *Missouri River Services v. Omaha Tribe of Nebraska* (8th Cir.2001) 267 F.3d 848, 852.

For example, in *Great Western Casino,* the "tribe agreed to waive its sovereign immunity and consent to suit, but only in a narrowly defined situation." 74 Cal.App.4th at 1420. The waiver limited where the plaintiff could file suit "and then only to recover the balance of its initial investment" only after four conditions were met: "(1) a board of arbitrators found the tribe had breached the management contract without cause and in bad faith; (2) at a time GWC had not yet recouped its initial investment in the enterprise; (3) and despite informal negotiations prior to the arbitration, and (4) a lapse of more than ten days after receipt of the arbitration board's findings without a satisfactory response from the tribe." *Id.* "For all other situations the tribe expressly reserved its sovereign

immunity in the management agreement," and in that case, the plaintiff "[did] not dispute[] the tribe did not waive its sovereign immunity regarding any of the other 14 causes of action alleging tort claims." *Id*. at 1420-1421.

Concisely put, in *Great Western Casino,* the waiver was limited by forum (arbitration); finding (breach without cause in bad faith); relief (initial investment); prerequisite (informal negotiations); and timing (lapse of 10 days). This was strictly construed; any action outside of those limited circumstances was barred.

In *Missouri River Services, Inc. v. Omaha Tribe of Nebraska*, just like this case, the Eight Circuit contemplated the scope of a tribe's waiver. "[T]he critical question is not whether the Tribe waived immunity, but rather, 'the extent to which that immunity was waived.'" 267 F.3d at 852; *quoting Namekagon Dev. Co. v. Bois Forte Res. Hous. Auth*., 517 F.2d 508, 510 (8th Cir.1975). "Because a waiver of immunity is altogether voluntary on the part of [a tribe], it follows that [a tribe] may prescribe the terms and conditions on which it consents to be sued, and the manner in which the suit shall be conducted." *Id*. (internal quotations omitted). "In addition, if a tribe "does consent to suit, any conditional limitation it imposes on that consent must be strictly construed and applied." *Id*.; *quoting Namekagon Dev. Co.,* 517 F.2d at 509.

The tribe's waiver read: "[a]ny monetary judgment or award may be satisfied only out of such property and/or out of [the Tribe's] share of any future [net operating profits] under this Agreement." *Id*. at 853. The *Missouri River* court held that the waiver placed enforceable limits on the funds available to satisfy any arbitration judgment: "[b]y the express terms of the only enforceable, valid agreement before the court, the Tribe's waiver of immunity was limited to entry of a judgment and execution thereon only as to property or profits from the Nebraska bingo facility." *Id.* at 854.

In *Campo Band of Mission Indians v. Superior Court*, the Court's holding helped clarify the significance of a strict and precise interpretation of a limited waiver of tribal sovereign immunity: "By virtue of this language in the Compact, the Tribe unambiguously waived its immunity relating to patron claims for negligent acts to the extent of the insurance coverage it contractually obligated itself to obtain for such

claims." (2006) 137 Cal.App.4th 175, 184, as modified (Mar. 1, 2006), *as modified on denial of reh'g* (Mar. 20, 2006); citing *C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Okla*. (2001) 532 U.S. 441, 418–422.

In *Lawrence*, the limits to the tribe's waiver were upheld. This Court found:

> A tribe's consent to suit must be clear and any conditions imposed thereon must be strictly construed and applied and the language of the Compact is unequivocal that, while Barona agreed to waive its tribal sovereign immunity to certain claims against it, it was permitted to choose the forum for the resolution of those claims and the terms governing the process for such resolution.

(2007) 153 Cal.App.4th 1364, 1370-1371.

In *Big Valley Band of Pomo Indians v. Superior Court*, this Court reasoned that "[i]n general, ... waivers of sovereign immunity are narrowly construed in favor of the sovereign and are not enlarged beyond what the language requires." (2005) 133 Cal.App.4th 1185, 1194-1195 (internal quotations omitted). This Court enforced the limits to the tribe's waiver:

> To permit a breach of contract action against the Tribe on the basis of the arbitration clause would enlarge the waiver beyond the language of the clause itself. Similarly, those cases that have considered the scope of an immunity waiver when a tribe files suit have limited the waiver 'to the issues necessary to decide the action brought by the tribe; the waiver is not necessarily broad enough to encompass related matters, even if those matters arise from the same set of underlying facts.'

Id.

This Court respected and upheld the limits to the waivers in *Great Western, Campo, Lawrence,* and *Big Valley*. Those waivers confined actions, forums, recourse and relief. The same sort of precisely worded waiver is before the Court here and the outcome should be the same—strict construction. Anything more abrogates La Posta's immunity when it has not done so voluntarily.

SARLA § 13.03(a) is the only portion of the SARLA that expressly and unequivocally waives tribal sovereign immunity. (1 LP 113.) The first sentence of § 13.03(a) allows suit in any of the identified fora for disputes arising under or related to the SARLA and limits recovery for any judgment to the Collateral in a manner consistent with § 13.04 which excludes from recourse Excluded Assets. *Id.* The first sentence waives immunity by explaining the types of suits; the available fora; the conditions upon which those suits can be brought; and the limits to recourse and relief. *Id.*

The second sentence waives immunity only to allow suits in three specific circumstances: suits related to recovery of: improper distributions, failure to deposit insurance proceeds constituting Collateral; damages resulting "from and after" La Posta's fraud. *Id.* In each of the three limited and enumerated instances, the available recourse is the damage related to the bad act itself. *Id.* Any other interpretation impermissibly expands the waiver beyond the explicit limits negotiated between the parties.

Strict construction of the limited waiver requires YAN remain within the bounds of the express language, but YAN is trying to extrapolate the express language of the first sentence to overcome the express limits if there is a determination of fraud. Quite simply, there is a waiver for breach and damages with respect to breach, and there is a waiver for fraud and damages from and after fraud. *Id.* The Sacramento Court erred by expanding the scope of the waiver beyond its express limitations and must be reversed.

III. If YAN is entitled to a deficiency judgment of $262,081, it cannot collect it from Excluded Assets like the RSTF.

Contrary to YAN's assertions, the deficiency amount determined by the San Diego Court (2 LP 563) (the amount to which YAN later stipulated (1 LP 158)), is the damage from the alleged fraud and all that YAN can recover if fraud exists. But the existence of a deficiency, if collectible, does not and cannot entitle YAN to recover any amount from Excluded Assets.

While this dispute was predicted by this Court in La Posta I, *La Posta I* at *17, the Sacramento Court is the first court to address the merits of the parties' contract

interpretation dispute as it was determined to be unripe in San Diego and YAN Court never continued the bifurcated trial.

A. The SARLA only allows a deficiency judgment from and after fraud.

The $262,081 figure is the deficiency related to the Forbearance Request determined in the San Diego Action—that is to say that the San Diego Judgment would have been $262,081 more had YAN not granted the Forbearance Request.[11] (1 LP 563.) YAN acknowledged the deficiency in its YAN Court Complaint, (See 2 LP 378, 380), in the YAN Court Action,[12] and again in its Opposition when it describes the "trivial monetary component." (See Opp. p. 39.) It is indisputable that $262,081 is the amount of the deficiency attributable to the Forbearance Request. Logically, this fits into the limited waiver in SARLA § 13.03(a).

As used in SARLA § 13.03(a), a deficiency judgment for damages "from and after the date [La Posta] commits any act of fraud" does not include damages related to breach of contract for nonpayment because the Casino was unprofitable. (1 LP 113.) "From and after" has significance and meaning.[13] Here, it means that in relation to fraud, a

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[11] To summarize, in November 2014, the San Diego Court heard the parties' arguments over whether the Forbearance Request actually caused YAN harm, and on December 30, 2014, the San Diego Court held that, the Forbearance Request, "effectively reduced YAN's breach of contract damages by some $262,081.65 . . . the difference between $44,732,786.63 and $44,470,704.98." (1 LP 563.) In holding that "YAN shall recover from La Posta $44,470,704.98," the San Diego Court did not award the additional $262,081.65 (because, ultimately, the jury found that fraud did not occur.) (Cf. 2 LP 560-564, 1 LP 132-133, 2 LP 577-578.)

[12] While YAN's Court Action transcript is not in the record here, the parties' stipulation is referenced by YAN's Court Judge in the YAN Judgment. (1 LP 158 ("IT IS FURTHER ORDERED the court confirms the parties' stipulation as to damages in the amount of $262,081.”))

[13] For example, in *People ex rel. Mattison v. Nye*, the Court examined language in California's Constitution to determine when a term of office began, and held that the phrase *from and after* "does not have an absolute and invariable sense, and it will receive an inclusive or exclusive construction, according to the intention with which it is used.

deficiency judgment shall include damages "from" the fraud, *i.e.*, from the Forbearance Request, and "after" the fraud, *i.e.*, $262,081 accrued in lost interest.

The limited wavier does not allow YAN to recover for its breach of contract action from beyond the Collateral if there is a final determination of fraud. It does not mean that YAN can seize La Posta's RSTF to recover *any and all damages* YAN can think of if it can prove fraud. And it certainly does not expressly waive immunity to allow YAN to seize the RSTF for any damages, let alone breach damages, related to any action taken before an act of fraud.

B. Excluded Assets remain excluded.

The limited waiver in § 13.03(a) allows recovery "beyond [La Posta's] interest in the Collateral" upon a determination of fraud, but beyond the Collateral does not mean YAN has recourse to the Excluded Assets. (1 LP 113.)

YAN's short section defending its contention (Opp. pp. 65-66) does nothing to show how the limited wavier in SARLA § 13.03(a) allows recourse to Excluded Assets. More, YAN does not refute the evidence from YAN's former Treasurer and Finance Director that confirmed that to secure a deal YAN made concessions explicitly including "removal of La Posta's revenue sharing trust fund payments from the security package." (8 LP 2335-2336.)

Instead, YAN would have the tail wag the dog by asserting SARLA § 13.03(a) *should* be construed to allow YAN recourse to the RSTF *because* it holds a judgment for its breach of contract action (and because the RSTF are assets "beyond" the Collateral). YAN simply states that "a final fraud finding entitles YAN to seek recovery from RSTF distributions." (Opp. p. 65.) But the express language of the limited wavier simply does not allow YAN to collect any damages against Excluded Assets, or to merge the recourse

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This intention, of course, we are to ascertain by an examination of the whole instrument in which the expression is found, seeking to harmonize and give effect to all its provisions." (1908) 9 Cal.App. 148, 163*; citing Saands v. Lyons*, 18 Conn. 18; see also *Oatman v. Walker*, 33 Me. 67; see also *O'Connor v. City of Fond du Lac*, 109 Wis. 253; *Parkinson v. Brandenburgh*, 35 Minn. 294, 28 N.W. 919; *Ziganto v. Taylor* (1961) 198 Cal.App.2d 603, 608–609; *Kuhs v. Superior Court* (1988) 201 Cal.App.3d 966, 973.

available across claims. More simply, "beyond the Collateral" does not reach to Excluded Assets and cannot mean RSTF.

The parties here negotiated § 13.04 to expressly forbid YAN from recourse to the Excluded Assets, namely the RSTF. This is further supported by the SARLA's collateral documents that explain that "in no event shall Pledged Revenues include . . . any trust lands or trust assets of [La Posta]." (1 LP 223.) No language in § 13.03(a) says that YAN is entitled to recourse from the RSTF upon a final determination of fraud, and the language outside the waiver in § 13.04 confirms the parties' agreement that Excluded Assets shall always remain excluded.

C. The Sacramento Court misinterpreted the limits to the immunity waiver.

YAN relies almost exclusively on the Sacramento Judgment to make its argument,[14] but the Sacramento Judgment seems contradictory:

> La Posta also argues section 13.03(a) does not permit YAN to seek recourse for the entire San Diego Judgment because the "from and after the date" language therein narrows the recourse only to damages arising "from and after" the fraudulent act. ***The language of section 13.03(a) does not clearly and explicitly limit recourse only to damages arising from and after the fraudulent act.*** The language of section 13.03 refers to "any recovery upon a judgment" ***(not just recovery for damages arising from and after a fraudulent act),*** and then states that recovery is generally limited to recovery against La Posta's Collateral, but that La Posta may be obligated beyond its Collateral and ***YAN may seek a deficiency judgment "from and after the date Borrower commits any act of fraud*** in connection with Lender, any Obligation, or any Loan Document, but only upon final determination of such matter (A) by a court of competent jurisdiction . . . ."

(8 LP 2535, emphasis added.) This deserves dissection.

[14] See Opp. p. 65 ("Because La Posta does not engage the trial court's analysis but merely makes the same arguments it made below, YAN will only outline the trial court's far more detailed analysis.")

The Sacramento Court distinguished (and emphasized) the separate portions of the waiver, but it emphasized the incorrect proviso, focusing on "notwithstanding" rather than "deficiency judgment" and "from and after." Referring to the "notwithstanding" proviso, the Sacramento Court believes that" [t]he only way to give the second sentence of section 13.03(a) any meaning is to interpret it as enumerating those instances when the restrictions of section 13.04 do not apply . . . section 13.03 then sets forth specific conditions under which 13.04 does not apply." (8 LP 2532-2533.) And the court points out again that the specific and "certain enumerated conditions" in § 13.03(a) but does not recognize that those enumerated conditions only allow for a deficiency judgment. (8 LP 2533, 2535.)

But then inexplicably, the Sacramento Court concludes that even though the specific limits to the waiver state that YAN may seek a deficiency judgment "from and after the date Borrower commits any act of fraud," it reasons that "[t]he language of section 13.03(a) does not clearly and explicitly limit recourse only to damages arising from and after the fraudulent act" because, according to the decision, the language before the term "notwithstanding" refers to "any recovery upon a judgment." (8 LP 2535.)

Put differently, according to the Sacramento Court, the proviso "notwithstanding the foregoing sentence" operates to expand recourse not only beyond the Collateral but into Excluded Assets, as well as eclipse the very specific condition only allowing a deficiency judgment—*i.e.*, the court held "from and after" does not actually mean "from and after." This is where the court erred.

Additionally, the Sacramento Court did not consider the jurisdictional import of the explicit language in the limited wavier when it interpreted § 13.04 under basic contract interpretation maxims. "Section 13.04 generally restricts YAN's recourse against La Posta's Collateral, while section 13.03 then sets forth specific conditions under which 13.04 does not apply." (8 LP 2535, 2533.) According to the Sacramento Court, without any consideration to the limits of tribal sovereign immunity, "sections 13.03 and 13.04 are consistent" because the proviso,

> notwithstanding the foregoing sentence . . .clearly carves out certain enumerated conditions when YAN can seek recourse against La Posta beyond just the Collateral (*i.e.*, into Excluded Assets (the RSTF payments)), and *one of those enumerated conditions includes a finding of fraud from a court of competent jurisdiction*. The only way to give the second sentence of section 13.03(a) any meaning is to interpret it as enumerating those instances when the restrictions of section 13.04 do not apply.

(8 LP 2534-2535, emphasis added.) Therein lies another error.

The enumerated conditions in the limited waiver cannot be separated and manipulated to expand recourse beyond the limits of the waiver, but that is exactly what has occurred and must be remedied. Beyond the Collateral does not mean recourse is allowed from Excluded Assets. The language "in a manner *consistent* with Section 13.04" does not become "in a manner *inconsistent* with Section 13.04" because the term "notwithstanding" is used. Individual sentences within sections of the SARLA cannot be read to nullify entire sections, contrary to the Sacrament Court's reasoning. The Sacramento Court erred by ignoring the importance of the limits to the waiver of tribal sovereign immunity and interpreting the SARLA with general contract principles instead of applying federal Indian law.

In sum, it cannot be reasonably disputed that the express language of the limited waiver of La Posta's immunity in SARLA § 13.03(a) only waives immunity for the specified types of recovery:

- for suits arising from the SARLA, recovery is limited to the Collateral; and
- for suits arising under three enumerated circumstances, recovery is limited to a deficiency judgment in the amount specified (*i.e.*, insurance proceeds, distribution amounts, or "from and after" fraud.).

From and after fraud here means $262,081. La Posta's waiver does not authorize recourse to Excluded Assets in the SARLA, thus the second sentence of §13.03(a) cannot

be perverted to allow YAN access to the RSTF. The Sacramento Court erred by ignoring the limits of the waiver and, by doing so, exceeded its jurisdiction requiring reversal.

IV. YAN misunderstands the doctrines of preclusion and ignores the preclusive effect of the San Diego Action.

A. YAN is wrong to assert that this appeal is precluded.

La Posta I predicted the Sacramento Action and this appeal:

> If the Tribal Court reaches a factual conclusion regarding fraud that is inconsistent with the final judgment in this case, the question regarding the impact of such a determination in a California enforcement proceeding would seem to be one in which a California court may have a substantial interest and the jurisdiction to decide independently.

La Posta I, at *18. YAN is correct that the Fourth District "was fully aware" of YAN's Court Action. (Opp. p. 15; *La Posta I*, at *17.)

But YAN is incorrect to attempt to use *La Posta I's* forecast to preclude this appeal. This is not an instance where there are "multiple appellate review[s] of the same issue again in a single case." (Opp. p. 16.) Despite that, "La Posta always knew we would be exactly where we are today, at this Court's express invitation," because La Posta knew YAN's Court Action was unfair. YAN is also incorrect to assert this appeal is barred. *La Posta I* did not resolve the issues here—to the contrary, it concluded "that the issue [of recourse to the RSTF] is not ripe." *La Posta I,* at *18.

YAN argues in its Section III(A)(1) that La Posta is judicially estopped from arguing the applicability of the TCCMJA. Its position needs to be unwound to demonstrate its patent logical and legal flaws. (Opp. p. 40.)

YAN contends that (a) the trial court held that that the TCCMJA was not necessary "because YAN is not seeking to enforce the tribal court money judgment in the manner of a civil judgment. YAN only seeks a declaration of rights ...." and, (b) "La Posta itself took exactly this position in successfully seeking a stay after the trial court

entered judgment," therefore (c) "La Posta is now estopped from advancing a contrary position." (Opp. p. 40.) This confuses two separate issues.

Put simply, YAN argues that judicial estoppel prevents La Posta from arguing the TCCMJA applies to *the YAN Judgment* because La Posta successfully argued that *the Sacramento Judgment* is declaratory and not monetary (to stay enforcement).

YAN misunderstands judicial estoppel and confuses the record. La Posta's successful efforts to stay enforcement of the Sacramento Judgment have nothing to do with the TCCMJA. (See, generally, 9 LP 2557-2571; 9 LP2638-2646.) Whether or not the Sacramento Judgment is stayed (without posting bond) is based on whether or not *the Sacramento Judgment* was a money judgment. See Code § 916(a). La Posta successfully argued that the Sacramento Judgment was a declaratory judgment, so no bond was needed to stay enforcement pending this appeal. (9 LP 2684-2687.) That is wholly independent from the court's scrutiny of the YAN Judgment, which is monetary and subject to the TCCMJA.

More, YAN's argument is based on its presupposition that its complaint caption is dispositive to this Court without more. It is difficult to accept at face value when YAN argues to this Court that with the Sacramento Judgment, "YAN sought enforcement of the San Diego judgment," (Opp. p. 27), even though YAN "captioned [its] complaint for declaratory relief, and it prays for only declaratory relief." (Opp. p. 42.)

YAN's artful pleading is the concern in this case. To allow a plaintiff to get around statutes by using "the dancing footwork of artful pleading," "[c]ourts must look to the substance of the lawsuit." *Boyd v. Boyd* (1964) 228 Cal.App.2d 374, 381and *Askew v. Askew* (1994) 22 Cal.App.4th 942, 954; see also, *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38*, as modified* (Sept. 23, 1998) ("If the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a demurrer.")

At bottom, La Posta is not judicially estopped from appealing the Sacramento Court's ruling that the TCCMJA does not apply to the YAN Judgment because La Posta successfully stayed enforcement of the Sacramento Judgment pending this appeal.

B. YAN never actually disputes La Posta's arguments that the San Diego Action bars the Sacramento Action.

La Posta maintains that YAN should have brought – and did bring – its entire case in San Diego—all of its witnesses and all of its causes of action. Everything subsequently tried in YAN's Court and Sacramento could have been tried in San Diego and should have been tried in San Diego. YAN was master of its complaint, and its strategic decisions in San Diego had consequences that YAN now does not like. There is no legitimate forum, particularly not this Court, that allows YAN to rewrite the past to circumvent the results of the California Jury Verdict.

Accordingly, as argued in La Posta's opening brief, the San Diego Action serves to bar the later Sacramento Action. (Opening pp. 51-61.) La Posta showed that the elements of res judicata, *Id*. at 52-53, and collateral estoppel, *Id*. at 44-57, were met by the San Diego Action to bar the Sacramento Action. And La Posta cited ample authority to explain that, "[i]f the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged. The reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions." *Aerojet-General Corp. v. American Excess Ins. Co.* (2002) 97 Cal.App.4th 387, 402, as modified on denial of reh'g (Apr. 2, 2002); *quoting Sutphin v. Speik* (1940) 15 Cal.2d 195, 202, italics in original. YAN does not appear to contest any of La Posta's argument that the San Diego Jury Verdict and Judgment (as upheld by *La Posta I*) bar the Sacramento Action.

Instead, YAN argues that "[p]reclusion is no issue because this is not a recognition and enforcement action." (Opp. p. 39.) And that La Posta "having litigated and lost the preclusive effect of the San Diego Judgment before the Tribal Court and then not appealed, La Posta is now precluded from arguing that the San Diego judgment collaterally estopped or barred YAN from seeking a negligent misrepresentation ruling." (Opp. p. 63.)

Unpacking this requires a chronology review: YAN filed its YAN Court Complaint on May 1, 2015; the San Diego Jury Verdict issued May 7, 2015; La Posta lost arguments that the Jury Verdict precluded YAN's Court Action on July 30, 2015; the San Diego Judgment issued November 3, 2015; the first YAN Court trial in the bifurcated proceeding ended on November 16, 2016; *La Posta I* issued June 28, 2017; La Posta filed its motion for leave to file supplemental authority in YAN's Court Action on June 28, 2017; and, the YAN Judgment issued March 8, 2018.

Plainly, YAN's support is chronologically misplaced. First, YAN Court denied the preclusive effect of the Jury Verdict nearly three years before the YAN Judgment issued and could have been appealed. Next, YAN focuses on the fact that the *La Posta I* had not been issued at the time YAN's Court Action began. (Opp. p. 61.) But YAN forgets that La Posta filed a motion to supply *La Posta I* to YAN Court before the YAN Judgment issued. And finally, YAN is incorrect to argue res judicata and collateral estoppel do not apply because that "[b]y the time this Court issued its opinion . . . YAN had already begun to discover and produce new evidence."[15] (Opp. p. 64.)

C. YAN's opposition does not defeat res judicata and collateral estoppel.

YAN argues that there is "no preclusion" for four reasons (Opp. p. 21), each examined here.

1. No different and previously unavailable evidence was introduced in YAN Court.

Quite simply, there was no new evidence in YAN's Court Action and YAN Court did not rely on anything substantively "new" in the YAN Judgment.

[15] This claim is a complete falsification. There were not new facts in YAN's Court Action and YAN did not begin to discover and produce the claimed new facts by the time *La Posta I* issued. (See, *e.g.*, Opp. p. 64.) There was no discovery in YAN's Court Action—the parties relied on the evidence from the San Diego Action—and the trial was 7 months before *La Posta I* issued. This is discussed further in the next section.

However, for the first time on appeal, YAN claims it "discovered additional evidence of fraud and," YAN implies as an aftereffect, "as expressly allowed by the parties' agreement, sued La Posta" in its own court.[16] (Opp. p. 25.) YAN claims six additional witnesses supplied unheard evidence of fraud. (Opp. pp. 25-26.) Yet, YAN has failed to support its argument with the citations to the record. Instead of pointing to any "new" evidence, YAN cites the YAN Judgment (Opp. p. 25) but the YAN Judgment does not support YAN's argument.[17]

There were not six new witnesses in YAN's Court Action The only witnesses in YAN's Court Action that did not testify before the San Diego Jury were Cora-Lei Marquez and Jon Huey and neither supplied "new" evidence. (8 LP 2482.) They testified to their experiences as YAN tribal council members and events that occurred years before YAN filed the San Diego Action. (1 LP 149, 150.) YAN had every opportunity to bring these witnesses to San Diego but chose not to do so.[18]

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[16] Requests to admit new evidence must be raised under Rule 909, and this Court grants such requests "only under exceptional circumstances that justify deviating from the general rule that appellate review is limited to the record before the lower court." *LaGrone v. City of Oakland* (2011) 202 Cal.App.4th 932, 946, as modified (Jan. 11, 2012); *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3; see also *In re Elise K.* (1982) 33 Cal.3d 138, 149 (explaining the "general rule"). YAN has not made any motion to support the "new evidence" and the evidence itself is not "new," thus it is improperly before this Court and should not be considered.

[17] YAN cites 1 LP 156: "1 LP 156 [discussing discovery of new evidence]. That page in the YAN Judgment does not refer to six new witnesses, it refers to the evidence YAN discovered years earlier during the discovery period in the San Diego Action where "YAN did not have knowledge of their claims for concealment or negligent misrepresentation until a deposition was taken" of James Hill, the former manager of the La Posta Casino. That deposition occurred June 27, 2014 (2 LP 429), a year before YAN filed YAN's Court Action. The YAN Judgment mentions the evidence to support the "discovery rule" and the postponement of the statute of limitations.

[18] See generally, *In re H.S.* (2010) 188 Cal.App.4th 103, 108 (considering Code Civ. Pro §§ 1008 and 657 to define "new evidence," "both require the moving party to 'provide not only new evidence *but also a satisfactory explanation for the failure to produce that evidence at an earlier time."(emphasis in original)); In re D.B*. (2013) 217 Cal.App.4th 1080, 1092 ([t]he term "new evidence" in section 388 means material evidence that, with

The YAN Judgment itself is all that needs to be considered on this point. The only "new" testimony the YAN Judgment considered was that "Huey remembered La Posta would implement the recommendations made by [a casino consultant]. He would not have granted an extension to La Posta unless they had committed to making the changes that [the casino consultant] recommended." (1 LP 149.) But this testimony would not have changed the Jury Verdict. The Jury knew of the Forbearance Request and YAN's purported reliance, but nonetheless "found credible La Posta's contrary evidence that La Posta intended to implement [the casino consultant's] suggestions and took steps to do so . . . Based on the jury's finding, it necessarily would have found La Posta was not liable for negligent misrepresentation." *La Posta I*, at *9-10.

The Jury Verdict, as upheld by *La Posta I*, was based on the exact same evidence as YAN's Court Action and there was no reason for YAN's second suit other than YAN knew it was failing to convince a California jury. Everything in the Sacramento Action (and YAN's Court Action) could have been raised in San Diego and decided by the jury.

2. YAN purposely initiated YAN's Court Action before the San Diego judgment became final.

YAN argues that there would be no preclusion on these facts because "[a]t the time YAN commenced [YAN's] Court proceeding, the San Diego judgment was not yet final—it was still on appeal to this Court." (Opp. p. 63.) Court That is untrue—when YAN commenced YAN's Court Action, filing on May 1, 2015, the jury trial in San Diego had not yet begun and *La Posta I* did not begin until early 2016. And significantly, La Posta did file *La Posta I* as supplemental authority about a year before the YAN Judgment issued—YAN's Court refused to acknowledge the motion or recognize it. There was no "purposeful" initiation of YAN's Court Action to bar preclusion.

3. CGCC's presence in the action does not overcome res judicata and collateral estoppel.

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due diligence, the party could not have presented at the dependency proceeding at which the order, sought to be modified or set aside, was entered")

YAN claims that the addition of the CGCC as a new party serves to bar res judicata and collateral estoppel. (Opp. pp. 21, 64.) Its reasoning is flawed.

The authority is clear: "[r]es judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties *or parties in privity with them*." *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896 (emphasis added).

YAN acknowledges the CGCC is in privity with La Posta as trustee of the RSTF. (Opp. p 24 fn 1.); *cf. Headwaters Inc. v. U.S. Forest Serv*., 399 F.3d 1047, 1053 (9th Cir. 2005) (explaining that for claim preclusion purposes, privity includes "trustees and beneficiaries, other fiduciary relationships and consensual or legal representational relationships"). Thus, YAN cannot oppose or prevent preclusion.

4. The contested contractual issues are the same in every YAN lawsuit.

YAN also argues preclusion does not apply because "of the nature of the question asked by the contractual provision at issue." (Opp. p. 21.) YAN also chose not to support this idea any further.

The contractual issue in the San Diego Action was whether La Posta breached the SARLA by failing to make loan payments, and that issue was not disputed.[19] But YAN complicated the San Diego Action beyond the simple breach of contract claim by raising what became the true contractual issue and the only issue litigated (before all three trial courts)—whether, under any circumstance, the SARLA allowed recourse for the breach of contract damages to the RSTF. (See, *e.g*., 2 LP 465-481.) YAN then pursued unpled accusations of fraud on its theory that if there was a finding of fraud, it could seize La Posta's RSTF as recourse for the entirety of the San Diego Judgment. *Id*. However, when the Jury Verdict found no intentional misrepresentation (subsequently interpreted by *La Posta I* to mean no fraud of any kind) the question of whether the second sentence

[19] La Posta had offered to stipulate to the breach at the outset of the San Diego Action. (See, *e.g.*, 2 LP 421.)

of SARLA § 13.03(a) allows recourse to the RSTF, following a lawsuit brought under the first sentence of § 13.03(a), was left unresolved in San Diego. *La Posta I* at *2. YAN then relitigated fraud in its own court as a stepping stone to argue recourse—to cobble together a basis to assert that YAN may recover the San Diego Judgment in full from the RSTF, ultimately leading to the questionable YAN Judgment and the Sacramento Action.

Altogether, the contractual issue that has been litigated has been the issue of recourse. Accordingly, preclusion applies here because these are the same parties and the same cause of action (albeit rebranding), see *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896, and the elements for preclusion are met. *Castillo v. City of Los Angeles* (2001) 92 Cal.App.4th 477, 481.

V. Without the YAN Judgment, YAN has no case, ergo the Sacramento Court should have required formal recognition of the YAN Judgment.

It seems self-evident that if a party brings a document to a court and asks the court to consider the substance of the document, the party is asking the court to recognize the document.

And that is exactly what YAN did, although YAN now says otherwise.

YAN filed the Sacramento Action and included the YAN Judgment as an attachment to its Complaint, attesting to its veracity (1 LP 144); it made formal allegations relying on select portions of the YAN Judgment's holding—*i.e.*, the finding of negligent misrepresentation (1 LP 55); it argued that that YAN Judgment is valid and defended the integrity of YAN's Court (4 LP 949); moved to have the YAN Judgment *considered* via judicial notice pursuant to Evid. Code § 453 (4 LP 973);[20] and it wholly relied on the YAN Judgment as a key piece of its litigation theory to seize the RSTF—then YAN simply told the Sacramento Court that it was not seeking recognition of the YAN Judgment.

[20] Evid. Code § 453 allows notice of any matter specified in § 452. Evid. Code § 452 does not list judgments or orders or determinations, but rather laws, regulations and legislative enactments, court rule, etc.

YAN did this because without the YAN Judgment, YAN has no case. YAN created this circus because it knows that the YAN Judgment would never be recognized in California if it had to adhere to the TCCMJA or the principles of comity.

To avoid the TCCMJA and comity, YAN's position, repeated like a mantra more than 15 times in YAN's 53-page brief, is incredulously simple: "*YAN has nowhere sought to have the [YAN] judgment recognized, entered, enforced, or registered*." (Opp p. 20; emphasis in original; see also pp. 17, 18, 21, 34, 39, 42, 43-45, 46.) YAN does want the court to know that "[t]he existence of the [YAN] Court judgment's fraud finding is, of course, important as a condition precedent to YAN's contractual right to compensation from La Posta's RSTF payments." (Opp. p. 42.)

This bizarre form of judicial gaslighting[21] should not be allowed—"[w]hile creative, Plaintiff's textualist argument does not succeed in gaslighting the Court." *Krauss v. Wal-Mart, Inc.* (E.D. Cal., Apr. 15, 2020) No. 2:19-CV-00838-JAM-DB, 2020 WL 1874072, at *8 (rejecting plaintiff's efforts to gaslight the court with semantics). And YAN's artful pleading and tautology are simply insufficient to prevail here. "The law is not a mere game of words." *Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187, 193; *Rubin v. Green* (1993) 4 Cal.4th 1187, 1203 (refusing to accept plaintiff's "conveniently different label for pleading what is in substance an identical grievance arising from identical conduct...."); *Standard Brands of California v. Bryce* (1934) 1 Cal.2d 718, 721 ("The subject matter of an action and the issues involved are determinable from the facts pleaded, rather than from the title or prayer for relief.") A plaintiff may not "plead around" an "absolute bar to relief" by simply "recasting the cause of action." *Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 283.

[21] See, *e.g.*, *Coburn v. Moreland*, 433 S.W.3d 809, 818 (Tex. App. 2014) (describing gaslighting as "manipulative behavior used to confuse people into questioning their reactions to events, so much so that the victims of gaslighting begin to question their own sanity.")

YAN plainly contradicts itself. The reality is that YAN brought the YAN Judgment to Sacramento because it needed a final determination of fraud to support its legal theory because CGCC refused to accept the YAN Judgment without a California court recognizing its validity. (1 LP 275-278; 1 LP 209.) YAN presented the YAN Judgment to the Sacramento Court with its pleading and by judicial notice and it was supplied to the Court several times as an exhibit. All of this sought "recognition" of the YAN Judgment, all of which requires formal procedure.

YAN brought the Sacramento Action to obtain such declaratory relief—to obtain a court order that "based on the San Diego Judgment . . . and the [YAN Judgment]" YAN has recourse to the RSTF. (1 LP 67.) However, YAN ignored this Court's premonition in *La Posta I:*

> We agree that [the YAN Court Action] shows the existence of a *possible* future controversy regarding the RSTF assets *if* YAN obtains a final determination of fraud in that forum. But to determine whether a hypothetical fraud determination in the Tribal Court would permit YAN to enforce the judgment against the RSTF assets, it is critical to understand the precise nature of any such "fraud" finding. ***Questions could arise, for example, as to whether any fraud judgment arising from the Tribal Court proceedings would or should be given effect in the face of the California jury's factual determination (embodied in the current final judgment) that La Posta did not commit fraud.*** Issues could also arise regarding . . . ***whether a particular "fraud" finding would allow recourse to all or only a portion of the RSTF assets***. These and other enforcement issues would depend not only on an interpretation of the Loan Agreement, but also on the specific nature of any fraud judgment.
>
> * * *
>
> [W]e do not intend to suggest that the Tribal Court would be an appropriate or the most appropriate jurisdiction to decide the scope of YAN's enforcement rights. ***If the Tribal Court reaches a factual conclusion regarding fraud that is inconsistent with the final judgment in this case, the question regarding the impact of such a determination in a California enforcement proceeding would seem to be one in***

> ***which a California court may have a substantial interest and the jurisdiction to decide independently***.

La Posta I, at *18 (emphasis added.) This exact scenario was brought to Sacramento. La Posta raised questions over whether the YAN Judgment should be given effect in the face of the Jury Verdict and whether the YAN Judgment would allow recourse to the RSTF. But contrary to this Court's warning, the Sacramento Court did not express any substantial interest in the inconsistency created by the YAN Judgment and its impact on the validity or impact of a California Jury Verdict. More directly, the Sacramento Court should have compelled YAN to pursue formal recognition of the YAN Judgment either through the TCCMJA or a comity analysis to adhere to this Court's guidance, but did not do so.

A. YAN cannot simply avoid the TCCMJA by artful drafting.

YAN has not disputed that the YAN Judgment is a "tribal court money judgment" by definition—*i.e.*, a written judgment of a tribal court for a specified amount of money ($262,081) that was issued in a civil action that is (according to YAN) final, conclusive, and enforceable by YAN's Court and is duly authenticated in accordance with YAN's laws. See Code § 1732(g); 4 LP 949. YAN admits the judgment awards monetary relief. (Opp p. 39; see also 1 LP 158.)

Significantly, YAN does not identify any portion of the TCCMJA that allows a party to use a tribal court money judgment without complying with the TCCMJA. YAN supposedly "struggle[d] in vain," but made no effort to support the Sacramento Court's erroneous decision in its brief or substantively oppose La Posta's cogent argument that the TCCMJA is mandatory and not discretionary (Opp. p. 44 fn 7.) Now, this Court's *de novo* review can focus on La Posta's argument and the Sacramento Court's brief ruling:

> [I]t is clear from the statutory language 'may' that applying for recognition and entry of judgment based on a tribal court money judgment is optional, not mandatory . . . Indeed, pursuant to the TCCMJA, the only function for which the TCCMJA purports to be mandatory is enforcement, not

> recognition: 'This chapter applies to all actions to enforce tribal court money judgments . . . .' (CCP § 1741(b).)

(2 LP 665; *cf*. Opening § II(A)(2).)

Instead of arguing the TCCMJA is merely discretionary, YAN argues it does not apply because YAN has not "sought to enforce any tribal court judgment." The complaint, YAN continues, "is captioned as a complaint for declaratory relief, and it prays only for declaratory relief, and is based on the *San Diego Judgment* … only." (Opp. p. 42; emphasis in original.) Thus, YAN concludes, "YAN did not ask the trial court to 'recognize' or 'enter' . . . a 'tribal court money judgment,'" therefore the TCCMJA does not apply. (Opp. pp. 44-45.)

Consequently, if the Court reasons that when the Sacramento Court received, read, analyzed, and accepted the YAN Judgment as "final determination" of fraud "by court of competent jurisdiction" it was actually recognizing the YAN Judgment, then the conclusion would be that the Sacramento Court erred by not adhering to the TCCMJA.

B. California should refuse to recognize the YAN Judgment.

The principles of comity articulated in the Restatements describe several bases for nonrecognition and the TCCMJA provides several additional reasons. See Restatement (Third) of Foreign Relations Law § 482 ("Restatement (Third)"); Restatement (Fourth) of Foreign Relations Law ("Restatement (Fourth)") §§ 483-484; Code § 1737(b).

La Posta argued the applicability of thirteen of these bases.[22] YAN spent the bulk of its brief on this issue arguing that La Posta agreed to the forum and that YAN's judicial system *as a whole* is not one of systematic unfairness. (Opp. pp. 48-50.)

While La Posta agreed to YAN's Court as a forum to resolve disputes, it believed that it would be fair, impartial, and afford due process. Even YAN agrees that "It would be a very strange jurisprudence that would force someone to litigate in a court whose

[22] (Code Civ. Proc. §§ 1737(b)(3); 1737(c)(1)(C); 1737(c)(1)(F); 1737(c)(1)(G); 1737(d)); Restatement (Third) (§§ 482(1)(a); 482(2)(d); 482(2)(e)); Restatement (Fourth) (§§ 483(a); 484(d); 484(g); 484(h); 484(i)).

judgments do not sufficiently comport with due process so as to permit recognition and enforcement." (Opp. p. 49 fn. 9.) But that is precisely what happened, only emphasizing the Sacramento Court's bizarre ruling that impartiality is not a requirement under the SARLA." (8 LP 2539.) La Posta noted this absurdity in its opening brief, and it may be the key to understanding why the Sacramento Court simply ignored the TCCMJA and comity.

Should this Court find that the TCCMJA applies, or in the alternate that a comity analysis was required, it is clear that the YAN Judgment is not entitled to recognition in California.

1. *La Posta I* forecloses recognition of the YAN Judgment.

The TCCMJA specifically allows a superior court to exercise discretion over whether to recognize a tribal court money judgment "if the judgment conflicts with another final and conclusive judgment."[23] Code § 1737(d).

The Sacramento Court, after ruling the TCCMJA did not apply, held in the alternate that "even assuming the San Diego Judgment and [YAN] Judgment conflict, La Posta presents no legal authority that indicates a Court must deny comity to a judgment that conflicts with another final judgment. The only legal authority La Posta presents is that a court may deny comity to a judgment which 'conflicts with another final judgment.' [Restatement (Third) § 482(2)(e)]." (8 LP 2540.) When the Sacramento Court held, in the alternate that "[n]onetheless, even if recognition was required, La Posta's arguments are not persuasive," the Sacramento Court abused its discretion by informally recognizing the YAN Judgment despite its direct conflict with *La Posta I* and the Jury Verdict. (8 LP 2538.)

La Posta refers back to its opening brief for its full argument on this issue, however it replies here to YAN's contentions that the court should consider the "last-in-

[23] YAN is simply wrong to argue that "[a] similar distinction does not exist in the Restatement, however," (Opp p. 57) as both the Restatement (Third) and Restatement (Fourth) state that a court need not recognize a judgment if the judgment conflicts with another final judgment. Restatement (Third) § 482(2)(e); Restatement (Fourth) § 484(d).

time" YAN Judgment (Opp. pp. 57-58) and that the YAN Judgment does not conflict with the Jury Verdict and *La Posta I*. (Opp. p. 58.) Both are wrong.

The comments to the Restatement (Fourth) explain, "[t]he last-in-time rule rests on the argument that the opposing party should have raised the preclusive effect of the first judgment in the second proceeding and that any error of the second court in not affording preclusive effect to the first judgment should be corrected on appeal." Restatement (Fourth) § 484. Here, La Posta did assert the preclusive effect of the Jury Verdict to YAN's Court and did file *La Posta I* as supplemental authority. YAN's Court declined to consider either and La Posta was unable to appeal the YAN Judgment for the reasons already stated.

YAN further mischaracterizes and misuses "*La Posta I"* to argue that "while there are perhaps inconsistent statements" between the Jury Verdict, *La Posta I* on one hand and the YAN Judgment on the other, "there is nothing fundamentally inconsistent about the judgments on the claims themselves [because] [o]ne judgment found no intentional fraud while the other found negligent misrepresentation." (Opp. p. 59.) This simply ignores *La Posta I*, where this Court found "[t]here was no substantive difference between YAN's asserted concealment and intentional misrepresentation claims, and ***the jury's finding that La Posta did not make any false statements necessarily resolves the negligent misrepresentation claim based on the same alleged facts.***" *La Posta I*, at *2, *10 (emphasis added) ("Based on the jury's finding, it necessarily would have found La Posta was not liable for negligent misrepresentation.")

Nonetheless, YAN attempts to soften this finding by mischaracterizing *La Posta I* and the Sacramento record. But based on the language that the jury "necessarily" would not have found negligent misrepresentation arising from the Forbearance Request, the Court made it clear that the Forbearance Request was not fraudulent. And there are no new facts—the YAN Judgment is based on the exact same Forbearance Request yet wholly inconsistent with *La Posta I*.

The TCCMJA and common law comity anticipate this exact scenario and urge nonrecognition of an out-of-state judgment that is inconsistent with a California decision.

The Sacramento Court erred when it recognized the YAN Judgment without formal process.

2. YAN Court did not give La Posta its "day in court."

La Posta was prejudiced when YAN's Court cut YAN's Court Action short by not scheduling the second part of the bifurcated trial to hear YAN's third cause of action interpreting the SARLA. Nonetheless, YAN now argues that "La Posta identifies no way in which it has been prejudiced by not having to defend against the unprosecuted claim." (Opp. p. 55.)

First, La Posta was prejudiced because it was likely to prevail in YAN's Court had it been a *fair* forum. As La Posta has pointed out here, the limited waiver of immunity in SARLA § 13.03(a) only allows a deficiency judgment upon a finding of fraud—and that is what YAN's Court awarded: "the court confirms the parties' stipulation as to damages in the amount of $262,081." (1 LP 158.) Had La Posta been heard, YAN's Court likely would have denied YAN's declaratory judgment and supplied a final order that La Posta could have used to preclude the Sacramento Action. While YAN argues that La Posta was "spared the likelihood of losing," YAN ignores the YAN Judgment. (Opp. p. 55.)

Second, La Posta was deprived of the right to appeal. Under the YAN rules of civil procedure, Rule 23 § 1, "A judgment is any final order of a trial judge made after a trial from which an appeal is available. No special form of judgment is required." (1 LP 193.) There is no indication in the YAN Judgment that it is final—in fact, quite the opposite as the YAN Judgment begins explaining that:

> This matter came on for a bi-furcated bench trial . . . The plaintiff's Third Cause of Action sought a declaration that upon a finding of any act of fraud, the plaintiff may collect the entirety of any judgment based on either an act of negligent misrepresentation or fraudulent concealment as a basis for a breach of the Second Amended Restated Loan Agreement (SARLA). The Court reserved such a finding subject to a determination whether the defendant committed any act of fraud under the Plaintiffs' First or Second Cause of Action in the complaint.

(1 LP 144-145.) Considering YAN's Court's explanation, and the subsequent finding of fraud, it was entirely reasonable for La Posta to believe that the matter would proceed to resolve YAN's declaratory action, following which a final judgment would issue. It was reasonable because if La Posta's defense to the declaratory action prevailed, YAN would have been foreclosed from claiming any right to the RSTF. Accordingly, La Posta did not believe it had a final appealable judgment and reasonably postponed appeal until after the third cause of action was heard.

YAN argues that La Posta "was free to seek review, by multiple means," but did not. (Opp. p. 21.) But, as explained, La Posta was not able to appeal—technically, the YAN Court Action remains ongoing to this day. YAN knows the matter remains open and taunts that "[i]f and when YAN's bifurcated claim for declaratory relief is ruled upon in the YAN Court Action, and ruled upon to La Posta's detriment, La Posta might, depending on the length and reasons for the delay, be able to make a due process argument," and "[i]f and when YAN seeks to have the $262,081 [YAN]Judgment in its favor recognized or entered, La Posta will be the first to know." (Opp. pp. 55, 46.) There is no appealable final judgment on an open matter.

Along these same lines, the Sacramento Court erred when it held that "[a] final determination as to YAN's third cause of action is not material to the issues currently before this Court," so the bifurcated YAN Court Action and La Posta's inability to defend against YAN's Court's declaratory action "does not affect the finality of the [YAN] Judgment and Order as to YAN's first two causes of Action." (8 LP 2539-2540.) This is in error because ruling on the third cause of action would have eliminated any possibility of the Sacramento Action.

Because the matter never concluded, La Posta was deprived of due process and its "day in court" in YAN's Court Action.

3. YAN itself determined YAN's Court Action was unfair.

The Sacramento Court held that "La Posta presents no evidence that the Tribal Council's Resolution [21-18] is anything more than advice and a request or that the Chief Judge is required to honor a request from the Tribal Council. (8 LP 2539.)

YAN treats its Resolution as a "trifle," "[s]ome tribal councilmembers made a statement." (Opp. p. 20.) Then, in a bizarre and inapplicable statement about race, YAN suggests that its "councilmember statements" could not amount to a due process violation because, the Indian "race" aside, with a "race-neutral application of the law" such trifling statements by state legislators (presumably of a non-Indian "race") would also be due process violations in California court—"Imagine the consequences." (Opp. p. 20.) See *Davis v. Commonwealth Election Commission* (9th Cir. 2016) 844 F.3d 1087, 1094 ("The Supreme Court has held that membership in a federally recognized American Indian tribe is a political—not racial—classification." (citing *Rice v. Cayetano* (2000) 528 U.S. 495, 520).)

YAN also attempts to downplay Resolution 21-18 as mere "legislative desire." (Opp. p. 53; 20.) But the comparison of a Tribal Council Resolution to a Congressional Resolution is a nonstarter and it is surprising that YAN would attempt to devalue the force and effect of its Tribal Council resolutions here as a litigation tactic.[24]

The reality that YAN ignores is, "[m]odern tribal governments carry out their affairs at the legislative level by the enactment of resolutions. These enactments may create laws or regulations, address concerns affecting the tribe or a single tribal member, approve budgets large and small, or concern broad or minor policy issues." *Reising v.*

[24] Relatedly, holding out resolutions as mere statements subjects YAN elected officials to personal liability for acting outside the scope of their authority when transacting tribal business. It is an illogical diminishment of the authority of YAN's governing body that forces those individuals to hold themselves out as tribal officers without the power to bind the tribe with their actions. An elected tribal leader with apparent but no real authority could result in grave repercussions on the basis of the *Ex Parte Young* (1908) 209 U.S. 123.

Mashantucket Pequot Tribal Nation, No. CV-GC-2007-0149, 2010 Mashantucket App. LEXIS 4, at *11 (Jan. 25, 2010).

YAN ignores (and would have this Court ignore) the long and well-documented history of tribal governments codifying official governmental actions through tribal council resolutions. Such resolutions have been analyzed in numerous fora, including the highest court in the land, as having force and effect of tribal law. *See, e.g, Montana v. U.S.* (1981) 450 U.S. 544 (examining resolutions prohibiting non-member fishing and hunting rights); *Runs After v. U.S.* (8th Cir. 1985) 766 F.2d 347, 354-355 (because "Tribal Council resolutions are…essentially legislative acts," individual tribal council members enjoy absolute legislative immunity for official actions.). YAN's arguments are unavailing and must be rejected.

So while YAN complains "La Posta cites not a single piece of system-wide evidence or a single authority for concluding YAN's entire tribal justice system fails to meet these very minimal standards, thereby justifying a refusal to grant that sovereign, federally recognized Indian tribal court system the respect it deserves," (Opp. p. 19), actually, La Posta has cited the only evidence on record, summarized by YAN itself in Resolution 21-18, where YAN found the actions of the judge "unacceptable" and "inordinate and inexplicable," and then YAN "de facto disqualified" its own judge in an attempt to "ensure the fair and impartial administration of justice." (5 LP 1202-1203.) YAN knew that YAN's Court's delays created the appearance of interference and inappropriate extrajudicial considerations, controversy related to the belated decision, and YAN lost confidence in its Court. *Id.* YAN failed to bring any evidence to show Resolution 21-18 was an anomaly and not the norm.

YAN's Constitution, Article XV § 2, explains that "All final decision on matters of temporary interest where a formal expression is needed shall be embodied in a resolution." (6 LP 1456, cf. Art. XV § 1 explaining that ordinances are "[a]ll final decisions on matters of permanent interest.") The "final decision" requiring a "formal expression" embodied in a resolution is a far cry from mere "legislative desire."

YAN uses its Tribal Council Resolutions to confirm official tribal actions. In this case, YAN used resolutions to confirm their development loan agreements, to purchase La Posta's loan from its original lender and to enter the SARLA itself (6 LP 1381-1387), all of which included a limited waiver of tribal sovereign immunity. Yet YAN does not question or diminish the authority of such. The point is that the resolution is used for far more than expressing the desire of a few councilmembers. And it certainly is more than a "mere request" to remove Judge Little. (Opp. p. 53. fn 10.) The Tribal Council declared him "de facto disqualified," it did not "request" removal of Judge Little. (5 LP 1202-1203.) YAN told its appointed Chief Judge that Judge Little was ousted and the case "shall be determined following its reassignment." *Id.*

In sum, La Posta claims YAN's Court has systematic failures, not only because of its actions, but more importantly because YAN said so. And La Posta knows that the YAN Court Action did not comport with due process because of Resolution 21-18.

4. The consequences of delay foreclosed due process.

YAN argues the only bases to claim YAN's Court did not supply due process "based on Resolution 21-18" is the "perceived undue delay in issuing the opinion." (Opp. p. 54.) Then, YAN exaggerates the point with several citations to cases where there was significant delay in the proceedings. (Opp. p 54.) Those cases are wholly unrelated to the case here.[25]

YAN tells us that the 14-month delay is "unacceptable" and that Judge Little violated YAN Rules of Civil Procedure, Rule 22 and Section 207 of the YAN Judicial Code. (5 LP 1202-1203.) *YAN* tells us that the delay is "inordinate and inexplicable"

[25] See *People v. Nelson* (2008) 43 Cal.4th 1242, 1249 (discussing the delay in charging a crime); *Deutsch v. Masonic Homes of California, Inc*., (2008) 164 Cal.App.4th 748, 752 (discussing the delay in initiating an action); *Rodgers v. State Bar* (1989) 48 Cal.3d 300 (same); *Chrysler Corp. v. New Motor Vehicle Bd*., (1979) 89 Cal.App.3d 1034, 1037 (where the "leisurely" pace was only a few months); *Barker v. Wingo* (1972) 407 U.S. 514, 534, 536 (where the minimal prejudice related to "living for over four years under a cloud of suspicion and anxiety," as the defendant was released on bond for most of the period and failed to object to continuances.)

such that the judge is de facto disqualified. *Id.* YAN tells is that it is "gravely troubled by the excessive delay." *Id.* And *YAN* tells us that only by "extraordinary action" can YAN compel its court to reassign the case, a necessary step to "ensure the fair and impartial administration of justice." *Id.*

YAN made it clear that its judge and its judgment cannot be trusted. And significantly, YAN has not demonstrated that it has ever recanted or retracted the Resolution since the YAN Judgment came out in YAN's favor. YAN announced that it could not trust the YAN Judgment: another reason the Sacramento Court erred by recognizing it.

VI. La Posta has standing to appeal the Sacramento Judgment.

YAN argues that the CGCC is the "only entity subject to any kind of judicial order in this proceeding," and has not appealed therefore La Posta lacks standing to appeal. (Opp. pp 34-36.)

YAN claims the CGCC is the only party with standing to appeal because "[i]t is black-letter law that trustees have 'a duty to take reasonable steps to defend actions that may result in a loss to the trust,' such as one attaching trust distributions." (Opp. p. 67.) YAN argues that "there can be no doubt [La Posta] lacks standing to bring contractual claims on behalf of the Commission, and its interpretation of the SARLA runs headlong into its clear and unambiguous terms."[26] (Opp. p. 39.)

To be clear, the trustor—the entity that established the trust—is the State of California. The trustee—the trust administrator—is the CGCC. The beneficiary (in this instance) is La Posta. (3 LP 728-726.) The California Legislature made it clear that "the [CGCC] shall have no discretion with respect to the use or disbursement of the trust funds. Its sole authority shall be to serve as a depository of the trust funds and to

[26] It is unclear what "contractual claims" YAN alludes to because the CGCC is not party to the SARLA and YAN is not party to the Compact. More, La Posta has only filed a counterclaim in San Diego seeking for a declaratory judgment clarifying the parties' rights under the SARLA—otherwise, La Posta has always been the defendant.

disburse them on a quarterly basis to Non-Compact Tribes." *Id*. Among other duties, the CGCC has a fiduciary duty to La Posta to administer the RSTF funds. La Posta is the party with the interest in the trust proceeds.[27]

The parties agreed to allow the CGCC to avoid its fiduciary duties by stipulation. (2 LP 655.) In that stipulation, the parties agreed that "the [CGCC] claims no interest in the RSTF monies that are the subject of this action, and takes no position with regard to the merits of the claims made by YAN and La Posta," and that the CGCC "is a nominal defendant in this action and that its continued active participation as a party is unnecessary." *Id*.

More, the underlying dispute relates to interpretation of a contract between YAN and La Posta. The CGCC is not a party to the SARLA, which is why YAN named La Posta as a defendant "Any party aggrieved may appeal in the cases prescribed in this title." Cal. Code Civ. Proc. § 902; See also §§ 904, 904.1(a)(1).[28]

YAN relies on *Sabi v. Sterling* (2010) 183 Cal.App.4th 916 to confirm that standing is a jurisdictional matter.[29] But *Sabi* tells us much more. *Sabi* informs us that

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[27] "[T]he provisions of the Probate Code dealing with the duties of trustees are applicable here in understanding the proper role of the Commission. Under the Probate Code, a trustee has the duty to 'take reasonable steps under the circumstances to take and keep control of and to preserve the trust property.'" *California Valley Miwok Tribe v. California Gambling Control Com*. (2014) 231 Cal.App.4th 885, 905–906; quoting Prob.Code § 16006.) The CGCC has a fiduciary duty to La Posta: "Those duties include, among others, (1) a duty of loyalty; (2) a duty of impartiality; (3) a duty to avoid conflicts of interest; (4) a duty to preserve trust property and make it productive; (5) a duty to exercise reasonable care, skill, and prudence in administering the trust; and (6) a duty to keep the beneficiaries of the trust reasonably informed of the administration of the trust. (§§ 16000-16015, 16040, subd. (a), 16060.) "A trustee's violation of any duty owed to the beneficiaries is a breach of trust." (§ 16400.)

[28] "Section 902 is a remedial statute, so courts construe it liberally, resolving doubts in favor of standing." *Id*.; *citing Ajida Technologies, Inc. v. Roos Instruments, Inc*. (2001) 87 Cal.App.4th 534, 540.

[29] YAN also relies on *In re Thramm's Estate* (1947) 80 Cal.App.2d 756 and *Martin v. City of Stockton* (1919) 39 Cal.App. 552 to explain the "black letter law" of appellate standing. Neither case is instructive on the modern approach.

"[a]n appeal may be taken only by a party who has standing to appeal," and "[o]nly a party who is aggrieved has standing to appeal," and finally that "[a] party is aggrieved only if its 'rights or interests are injuriously affected by the judgment.'" *Id.* "The appellant's interest must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment." *Leoke v. San Bernardino County* (1967) 249 Cal.App.2d 767, 771 (internal quotation omitted). "The injured interest also must belong to the party: 'a would-be appellant "lacks standing to raise issues affecting another person's interests." ' " *Id.*; *quoting In re J.T.* (2011) 195 Cal.App.4th 707, 717.

La Posta is an aggrieved party and appeals on behalf of its own interests in the SARLA and in its RSTF. The Sacramento Judgment injures La Posta and only La Posta and, as the CGCC has stipulated to be bound by the Sacramento Judgment, the Sacramento Judgment's injuries will be immediate, pecuniary, and substantial.

Immediate considers whether the impact of the judgment would occur without delay and would not be separated by other things—*i.e.*, not remote consequences. See, *e.g.*, Black's Law Dictionary (11th ed. 2019), *Immediate*. According to the Sacramento Judgment, the CGCC would begin to pay YAN all of La Posta's RSTF beginning with the next subsequent quarter and continue to pay YAN forever. (*E.g.*, Opp. p. 27 "[B]ecause the interest alone on the San Diego judgment exceeds La Posta's annual allocation from the RSTF, YAN is losing more than $3,000 per day while the judgment remains stayed, all of which even victory will not allow it to recover.")). The RSTF payments are certainly La Posta's ***pecuniary*** interest. And, as found by the Sacramento Court, the RSTF are a ***substantial*** part of La Posta's tribal revenue, without which La Posta may be unable to survive as a tribal government. (See 3 LP 813-817.)

There can be no doubt that La Posta has standing. It is bad faith for YAN to assert otherwise.

VII. Challenging the declaratory judgment obligating the CGCC is not a new issue on appeal—it was not contestable until the Sacramento Court issued the order.

Until the Sacramento Judgment was issued, the parties could not have known the language the Court would choose. YAN's proffered language sought to make the judgment appear as a money judgment and La Posta objected. While the Sacramento Court made it clear in its Order it was granting YAN's motion for summary judgment, and that "YAN is entitled to a declaration," until La Posta could see the final judgment, it did not know whether it needed to raise the issue. This appeal is the proper time to raise the issue.

"A trial court is presumed to know the governing law, and litigants generally are not required, on pain of forfeiting valuable rights, to remind trial courts of relevant statutory provisions." *People v. Braxton* (2004) 34 Cal.4th 798, 814. Code Civ Pro § 1060 does not allow the Sacramento Court to obligate the CGCC because the CGCC is not a party to the SARLA, and the CGCC is not party to any contract with YAN. The declaratory judgment should have issued against La Posta.

CONCLUSION

YAN has pursued endless litigation across multiple fora chasing funds that are simply not available. The parties negotiated repayment of the SARLA from the ongoing revenues of the Casino. The parties negotiated relief from and after fraud, if any. And the parties negotiated that YAN is never entitled to Excluded Assets. When forced with the reality that YAN would be unable to recoup its investment in the development of the La Posta Casino, YAN made it its mission to ceaselessly pursue La Posta to try to take away its only meaningful source of government funding, despite the parties' agreement to protect such assets from recourse

This Court cannot and should not be swayed by a wild abuse of artful pleading, multi-jurisdictional scheming, and plain attempts to disregard a California jury and this Court. The Sacramento Court erred by recognizing the YAN Judgment and ignoring the

limits to La Posta's waiver of immunity. This Court should refuse to recognize the YAN Judgment and dismiss.

Dated: February 25, 2021

/s/ Justin Gray

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that, pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the enclosed Appellant's Opening Brief is produced using 13-point Roman type and contains approximately 13,751 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: February 25, 2021

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La Posta Band of Diegueno Mission Indians

CERTIFICATE OF SERVICE

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 Kent, State of Michigan. My business address is 44 Grandville Ave., S.W., Ste. 300, Grand Rapids, Michigan 49503.

On February 25, 2021, I served true copies of the following document(s) described as:

APPELLANT'S REPLY BRIEF

on the interested parties in this action as follows:

BY ELECTRONIC SERVICE: I served the document(s) on the persons listed in the Service List by submitting an electronic version of the Opening Brief to TrueFiling, through the user interface at www.truefiling.com.

Eric George Brown George Ross, LLP 2121 Avenue of the Stars, Suite 2800 Los Angeles, CA 90067 Counsel for Plaintiff Yavapai-Apache Nation	Paras Hrishikesh Modha Deputy Atty General of CA 1300 I Street, Suite 125 Sacramento, CA 94244-2550 Counsel for Defendant California Gambling Control Commission
California Court of Appeal Third Appellate District 914 Capital Mall 4th Floor Sacramento, CA 95814	

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

Dated: February 25, 2021

/s/ Scott Funke
Paralegal
ROSETTE, LLP

Court of Appeal, Third Appellate District
Andrea K. Wallin-Rohmann, Clerk
Electronically RECEIVED on 2/26/2021 at 11:12:17 AM

3rd Civ. No. C091801

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

YAVAPAI-APACHE NATION,
a federally recognized Indian tribe

Plaintiff, Respondent and Cross-Appellant,

vs.

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

Defendant, Appellant and Cross-Respondent

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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 Sacramento, State of California. My business address is 1415 L Street Suite 450, Sacramento, CA 95814.

On February 26, 2021, I served a true copy of the following document(s) described as **APPELLANT'S REPLY BRIEF** on the Sacramento Superior Court, 813 – 6th Street, Sacramento, CA 95814 **BY FEDERAL EXPRESS**.

Dated: February 26, 2021

/s/ Marrianne Galli
Paralegal
ROSETTE, LLP