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7 Attorneys for the Plaintiff UNITED STATES

8 IN THE UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,
12 Plaintiff,

CASE NO. '14CV2855 DMS BLM

**COMPLAINT FOR PERMANENT
INJUNCTION**

13 v.

14 IIPAY NATION OF SANTA YSABEL, also
known as SANTA YSABEL BAND OF
15 DIEGUENO MISSION INDIANS OF THE
SANTA YSABEL RESERVATION, a federally
16 recognized Indian Tribe; the SANTA YSABEL
GAMING COMMISSION; SANTA YSABEL
17 INTERACTIVE; and SANTA YSABEL
TRIBAL DEVELOPMENT CORPORATION,

18 Defendants.
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20
21 **INTRODUCTION**

22 1. This is an action for injunctive relief under the Unlawful Internet Gambling Enforcement
23 Act (“UIGEA”), 31 U.S.C. §§ 5361-5367. The United States’ claims concern Defendants’ ownership,
24 management and/or operation of a gambling business accessible to the public on the Internet at
25 www.desertrosebingo.com (“Desert Rose Bingo”). Pursuant to 31 U.S.C. § 5365(b)(1), the United States
26 seeks to enjoin Defendants from engaging in restricted transactions arising out of unlawful Internet
27 gambling.

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THE DEFENDANTS

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2 3. IIPAY NATION OF SANTA YSABEL, also known as SANTA YSABEL BAND OF
3 DIEGUENO MISSION INDIANS OF THE SANTA YSABEL RESERVATION (“IIPAY”) is a federally
4 recognized Indian tribe. IIPAY is located within the Santa Ysabel Reservation, an area that consists of
5 approximately 15,500 acres between the towns of Santa Ysabel and Warner Springs in the County of San
6 Diego, State of California (“IIPAY Indian Lands”).

7 4. The SANTA YSABEL GAMING COMMISSION (“SYGC”) is a tribal entity and/or
8 agency established by IIPAY to regulate gambling operations conducted by IIPAY.

9 5. SANTA YSABEL INTERACTIVE (“SYI”) is a tribal corporation established under the
10 laws of IIPAY. SYI is a wholly-owned subsidiary of SANTA YSABEL TRIBAL DEVELOPMENT
11 CORPORATION (“SYDC”), which is wholly owned by IIPAY.

12 6. IIPAY, SYGC, SYI and SYDC (collectively “Defendants”) own, manage and/or operate
13 Desert Rose Bingo.

JURISDICTION AND VENUE

14
15 7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §
16 1331 and 31 U.S.C. § 5365(a), the latter of which specifically confers jurisdiction on this Court for
17 actions brought under UIGEA.

18 8. Personal jurisdiction and venue are proper in this District pursuant to 28 U.S.C. § 1391
19 because one or more of the Defendants reside within this District and a substantial part of the events or
20 omissions giving rise to the claim occurred within this District.

UIGEA

21
22 9. Congress enacted UIGEA in 2006 based on findings that “Internet gambling is a growing
23 cause of debt collection problems for insured depository institutions and the consumer credit industry”
24 and “traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or
25 regulations on the Internet.” 31 U.S.C. § 5361(a)(3)-(4).

26 10. UIGEA provides that “[n]o person engaged in the business of betting or wagering may
27 knowingly accept, in the connection with the participation of another person in unlawful Internet

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1 gambling,” various forms of fund transfers through credit cards, electronic fund transfers, checks or
2 similar instruments. 31 U.S.C. § 5363. A “transaction or transmittal involving any credit, funds,
3 instrument, or proceeds described in any paragraph of section 5363” is defined as a “restricted
4 transaction” under UIGEA. 31 U.S.C. § 5362(7).

5 11. The term “Internet gambling business” is defined broadly to include “the business of
6 placing, receiving or otherwise knowingly transmitting a bet or wager by any means which involves the
7 use, at least in part, of the Internet.” 12 C.F.R. § 233.2. An “Internet gambling business” promotes
8 and/or engages in “unlawful Internet gambling” if the business places, receives, or otherwise knowingly
9 transmits “a bet or wager by any means which involves the use, at least in part, of the Internet [and] such
10 bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which
11 the bet or wager is initiated, received or otherwise made.” 31 U.S.C. § 5362(10); 12 C.F.R. § 233.2(bb).

12 12. The term “bet or wager” is defined broadly to include (i) “the staking or risking by any
13 person of something of value upon the outcome of a contest of others, a sporting event, or a game subject
14 to chance, upon an agreement or understanding that the person or another person will receive something
15 of value in the event of a certain outcome;” (ii) “the purchase of a chance or opportunity to win a lottery
16 or other prize (which opportunity to win is predominantly subject to chance);” and (iii) “any instructions
17 or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or
18 from an account with the business of betting or wagering.” 31 U.S.C. § 5362(1)(A), (B) & (D).

19 **DESERT ROSE BINGO**

20 13. Defendants are “engaged in the business of betting or wagering” within the meaning of 31
21 U.S.C. § 5363.

22 14. Desert Rose Bingo is an “Internet gambling business” within the meaning of 12 C.F.R. §
23 233.2 because, among other factors:

24 14.A. Customers of Desert Rose Bingo may access the business from any location by
25 logging on to www.desertrosebingo.com through any web-browser-enabled device such as cell phones,
26 tablets and iPads, laptops or desk computers.

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1 14.B. After accessing Desert Rose Bingo through the Internet, customers who are
2 California residents and at least 18 years of age may register with Desert Rose Bingo to create an on-line
3 account. Once registered, a customer becomes an “Account Holder.”

4 14.C. Account Holders may deposit funds into their on-line accounts by electronically
5 transferring funds to Desert Rose Bingo through the use of a credit or debit card, electronic fund transfer
6 or check. Account Holders may maintain as much as \$5,000 in United States currency on deposit with
7 Desert Rose Bingo.

8 14.D. Account Holders who have deposited funds into their on-line accounts and have
9 logged on to www.desertrosebingo.com may navigate to the “bingo” tab on the online game screen and
10 purchase bingo cards in United States currency. The denomination choices range from \$0.01 to \$1.00 per
11 game, and Account Holders can purchase up to 500 bingo cards per game.

12 14.E. After an Account Holder has purchased one or more bingo cards for a game, the
13 website directs the Account Holder to the “playback mode” screen. In “playback mode,” the screen is
14 divided into three sections. The section on the right of the screen identifies the game “ID” number, the
15 number of cards purchased and the number of Account Holders participating. The section in the middle
16 shows the card(s) purchased by the Account Holder. The cards appear in a traditional “bingo” format
17 with twenty-four numbers arranged within a 5-by-5 box grid and a “free space” occupying the middle
18 box. The section on the left of the screen identifies the Account Holder’s account balance and displays a
19 15-by-5 box grid containing bingo numbers 1 through 75.

20 14.F. Once a minimum number of five Account Holders have purchased cards for a
21 particular game, the game commences. The online game proceeds quickly at a rate of approximately two
22 to three numbers automatically “called” every second. As the numbers are called, they are highlighted on
23 the 15-by-5 box grid on the left of the screen. When a number on a purchased card is called, it is also
24 automatically highlighted on the card(s) in the middle section of the screen. The game proceeds in this
25 manner until a bingo pattern develops on an Account Holder’s purchased card(s). When a bingo pattern
26 develops, the game stops and a message box appears on the on-line screen identifying the winning
27 Account Holder’s user name and the amount won.

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1 14.G. When an Account Holder is identified as the winning Account Holder following a
2 bingo game, that Account Holder's on-line account is credited in the amount won. When an Account
3 Holder is not identified as the winning Account Holder following a bingo game, that Account Holder's
4 on-line account is debited an amount equal to the purchase price of the Account Holder's bingo card(s).

5 14.H. Desert Rose Bingo pays out winnings to Account Holders based on a formula that
6 calculates, among other factors, a specified percentage of the pay-in amount for the game cards purchased
7 for a particular game and a specified percentage to be retained by Defendants.

8 15. Account Holders who place bets or wagers through Desert Rose Bingo from locations that
9 are outside IIPAY Indian Lands are participating in "unlawful Internet gambling" within the meaning of
10 31 U.S.C. § 5362(10) and 12 C.F.R. § 233.2(bb) because, among other factors:

11 15.A. The California Constitution prohibits lotteries and bingo games except for
12 charitable purposes. Cal. Const. Art. IV, §§ 19(a), (c), (d).

13 15.B. California Penal Code §§ 319, 320, 321 and 322 prohibit lotteries, which are
14 defined to include "any scheme for the disposal or distribution of property by chance, among persons who
15 have paid or promised to pay any valuable consideration for the chance of obtaining such property or a
16 portion of it, or for any share or any interest in such property, upon any agreement, understanding, or
17 expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or
18 gift enterprise, or by whatever name the same may be known."

19 15.C. California Penal Code §§ 337a(a)(2) through (4) prohibit keeping a place with a
20 device for the purpose of recording or registering any bets or wagers; receiving, holding or forwarding
21 money bet or wagered; and/or otherwise recording or registering any bets or wagers that are made "upon
22 the result . . . of . . . any lot [or] chance."

23 15.D. The game of bingo available through Desert Rose Bingo is a non-charitable form of
24 lottery as it is a game played for a prize determined by chance for consideration.

25 **FIRST CAUSE OF ACTION**

26 (Injunctive Relief under UIGEA)

27 16. The United States realleges and incorporates by reference the allegations in paragraphs 1
28 through 15.D.

1 17. Commencing on or about November 3, 2014, Defendants knowingly accepted, and
2 continue to knowingly accept, in connection with the participation of other persons in unlawful Internet
3 gambling conducted through Desert Rose Bingo, “restricted transactions” within the meaning of 31
4 U.S.C. § 5362(7) and in violation of 31 U.S.C. § 5363.

5 18. Pursuant to 31 U.S.C. § 5365(b), the United States “may institute proceedings under this
6 section to prevent or restrain a restricted transaction,” and, “[u]pon application of the United States under
7 this paragraph, the district court may enter a temporary restraining order, a preliminary injunction, or an
8 injunction against any person to prevent or restrain a restricted transaction.”

9 19. Relief is required to maintain the public health and safety. If Defendants are not enjoined,
10 Defendants will likely continue to promote and facilitate unlawful Internet gambling.

11 **PRAYER**

12 WHEREFORE, the United States prays for judgment in its favor awarding the United States:

13 1. A temporary restraining order, a preliminary injunction and a permanent injunction against
14 Defendants, and each of them, to prevent or restrain Defendants from accepting, through the operation of
15 Desert Rose Bingo, the following:

16 A. credit, or the proceeds of credit, extended to or on behalf of any Desert Rose Bingo
17 Account Holder (including credit extended through the use of a credit card);

18 B. an electronic fund transfer, or funds transmitted by or through a money transmitting
19 business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf
20 of any Desert Rose Bingo Account Holder;

21 C. any check, draft, or similar instrument which is drawn by or on behalf of any
22 Desert Rose Bingo Account Holder and is drawn on or payable at or through any financial institution; and

23 D. the proceeds of any other form of financial transaction, as the Secretary and the
24 Board of Governors of the Federal Reserve System may jointly prescribe by regulation, which involves a
25 financial institution as a payor or financial intermediary on behalf of or for the benefit of any Desert Rose
26 Bingo Account Holder.

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2. And for any other relief this Court deems appropriate.

Date: December 3, 2014

Respectfully submitted,
LAURA E. DUFFY
United States Attorney

By /s/ Glen F. Dorgan
GLEN F. DORGAN
Assistant United States Attorney

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attornv's (Firm Name, Address, and Telephone Number)

DEFENDANTS

IIPAY NATION OF SANTA YSABEL, also known as SANTA YSABEL BAND OF DIEGUENO MISSION INDIANS OF THE

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys(If Known)

'14CV2855 DMS BLM

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury CIVIL RIGHTS 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights	PERSONAL INJURY 362 Personal Injury - Med. Malpractice 365 Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 R.R. & Truck 650 Airline Regs. 660 Occupational Safety/Health 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 840 Trademark SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609	400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 810 Selective Service 850 Securities/Commodities/Exchange 875 Customer Challenge 12 USC 3410 890 Other Statutory Actions 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1331 and 31 U.S.C. § 5365(a)

Brief description of cause:

Unlawful Internet Gambling Enforcement Act ("UIGEA")

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Anthony J. Battaglia

DOCKET NUMBER 14-cv-2724-AJB-NLS

DATE
December 3, 2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.