

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE PROTEST OF:) **SAN DIEGO DISTRICT OFFICE**
)
Dianne Jacob, County Supervisor, District 2, et al.) Case No.: 16084762
Against the Issuance of a License To:) OAH No. 2017020457
)
Jamul Indian Village Development Corporation,) **Protestants’ Reply Brief to**
San Diego Gaming Ventures LLC) **Department’s Response to**
Dba: Hollywood Casino Jamul) **Protestants’ Notice of Briefing re:**
14191 Highway 94) **Request for Official Notice**
Jamul, CA 91935-3213)
_____)

Contrary to the Department’s assertion, Protestants, Helen Comer, Steven Comer, Donna Foster, Kevin Foster, Shannon Foster, Veronica Hoban, Robert Jackson, John Munnik, Kathryn Munnik, Theresa Murphy, Michael Murphy, Jocelyn Parker, Mclain Parker, Patrick Parker III, Linnea Peltola, Nadja Pretty, Sean Pretty, Dawn Scialabba, Larry Scialabba, Paul Scripps, Patricia Terry, Gregory Tyree, Kathleen Tyree, Patrick Webb, Debra Webb, Sara White, and Schuyler White (“the Webb Protestants), filed and served their Request for Official and Judicial Notice on November 14, 2016 on all parties.

1. The Department Has Not Offered Any Rebuttal Evidence

Gov. Code 11513(b) does not allow admission of improper rebuttal evidence, such as Applicants’ Exhibit 1. See, Protestants’ Motion to Strike Applicants’ Exhibit 1.

Neither the Applicants, nor the Department, have any right to submit rebuttal evidence on an issue for which they had the burden of proof in their case in chief, and rested without submitting a single grant deed qualifying the land in question for gambling. Both the Applicants and the Department, have silently conceded this position, having failed to distinguish, *Latour v. Ford* (1903) 140 Cal. 414, 422; *People v. Robinson* (1960) 179 Cal.App.2d 624, 631; and *Lipman v. Ashburn* (1951) 106 Cal.App.2d 6126, 620, all of which hold that it is well settled that

a party who has the affirmative may not reserve a portion of her/his evidence until the opposite party has exhausted her/his to negative that offered in the first instance, and if she/he does so, the tribunal will refuse to allow them to come in and make out her/his case after the defendant rests.

24 Cal. Jur. Trial §§ 45, 48.

The Department's reservation of the right to put on rebuttal evidence, does not allow presentation of any evidence as to whether the Applicants have met their burden of proof to demonstrate that they are not operating a public gambling nuisance on the land in question. Any such evidence is evidence that should have been put on in the Department's case in chief to prove the Department's October 14, 2016 Statement of Reasons for its erroneous recommendation that a liquor license be issued to Applicants, wherein the Department falsely states:

1. The premises is located on a Federal Indian Reservation and is exempt from complying with local zoning.

2. There are no consideration points as defined by Business and Professions Code section 23789 within 600 feet of the premises..." Neither of which are true statements, as reflected in the Transcript of the November 16-17, 2016 hearing and Protestants' Hearing Briefs and Exhibits P-11, A-M.

Now that the Department has rested its case on November 17, 2016, the Department cannot supplement what it failed to present on its duty to ensure that a public gambling nuisance is not being operated on the land for which the liquor license has been applied.

Dated: June 9, 2017

WEBB & CAREY APC

/s/ Patrick D. Webb

Patrick D. Webb

Attorneys for Represented

Protestants