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3 IN A REALTIME PARTIALLY EDITED TRANSCRIPT, YOU MAY
4 SEE THE REPORTER'S RAW SHORTHAND NOTES. CONSEQUENTLY, YOU
5 MAY SEE ERRORS IN CAPITALIZATION AND PUNCTUATION,
6 MISSPELLINGS, SMALL WORDS MISSING (SUCH AS "THE," "IT,"
7 "A"), TRANSPOSED WORDS, DOUBLE WORDS, CONTEXTUAL HEARING
8 MISTAKES, HEARING MISTAKES OF SOUND-ALIKE WORDS, POSSIBLE
9 INCORRECT SPEAKER IDENTIFICATION, AND AT TIMES STENO
10 OUTLINES THAT HAVE NOT BEEN TRANSLATED.

11 BE ASSURED THAT IN THE FINAL EDITED VERSION OF THE
12 TRANSCRIPT, ALL ERRORS ARE CORRECTED. AN UNEDITED OR
13 PARTIALLY EDITED TRANSCRIPT REPRESENTS A FIRST DRAFT AND
14 SHOULD BE USED ACCORDINGLY.

15 THEREFORE, IT IS NOT RECOMMENDED YOU RELY ON THE
16 UNEDITED VERSION AS YOU WOULD A FINAL EVIDENTIARY CERTIFIED
17 TRANSCRIPT. ALTHOUGH AN UNEDITED OR PARTIALLY EDITED
18 TRANSCRIPT WILL BE VERY READABLE AND MOSTLY ACCURATE, IT
19 SHOULD BE USED WITH GREAT CARE.

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1 GABRIELINO-TONGVA TRIBE VS. STEIN

2 09:56 AM.

3 THE COURT: Gabrielino versus Stein, BC361307 good
4 morning.

5 MS. IBARRA: Good morning.

6 MR. FORDYCE: Good morning Your Honor.

7 THE COURT: Counsel make your appearances Delia
8 Ibarra on behalf of plaintiff Gabrielino-Tongva Tribe.

9 MR. FORDYCE: Niall Fordyce on behalf of Mr. Stein
10 and Stein -- and law offices of Jonathan Stein.

11 MR. STEIN: Jonathan Stein on behalf of SMDC and
12 the Crane Group.

13 THE COURT: Okay thank you. Let's continue.

14 MR. FORDYCE: Okay.

15 THE COURT: Mr. Stein you understand you're still
16 under oath?

17 A. Yes Your Honor.

18 THE COURT: Okay.

19 MR. FORDYCE: I just need to find because we gave
20 the court our copy of Exhibit 753 I'm just bringing it up
21 the electronic version which I have here. So Mr. Stein
22 we're going to go back and just briefly take a look at
23 Exhibit 753 again and a couple other -- and I want to go
24 through the exhibit with you in a little bit more detail
25 which we didn't actually do yesterday so I believe I have
26 75 three up in front of you and for opposing counsel and
27 for the Court that is in Defendants binder volume three and
28 Exhibit 753. I'll give the court a minute to find that?

1 A. Have you found your handshake any stronger since
2 this case started.

3 THE COURT: Yes. Yes much stronger. I'm there.

4 MR. FORDYCE: Okay great thank you Your Honor.

5 Q. BY MR. FORDYCE: So Mr. Stein again this is
6 resolution 39 you've seen this document before?

7 A. Yes I've seen it and saw the signed version
8 develop.

9 Q. Okay. Dated March 24th, 2002. Please read the
10 first whereas clause?

11 A. Whereas clause the State of California has
12 recognized that a single tribal council shall be the state
13 recognized governing body of the tribe as set forth in
14 assembly joint resolution '96 chaptered by the California
15 Secretary of State as resolution chapter 146 statutes 1994
16 the joint resolution.

17 Q. What is this clause?

18 A. Actually you don't really need it, it just says
19 that the tribal council is the governing body of the
20 tribe.

21 Q. Was your belief at the time that this was true?

22 A. I don't know. I didn't write this. There were
23 several tribal councils representing the Gabrielino tribe
24 and joint assembly resolution '96 specifically made a point
25 of not recognizing any single tribal council as a
26 representative of the tribe from the State of California's
27 point of view.

28 Q. To your knowledge, who wrote this?

1 A. Rae Lamothe.

2 Q. Please move to the next whereas clause.

3 A. Whereas on June 24th, 2001, the resolution No. 15
4 appointing Rae Lamothe as tribal general counsel was
5 adopted.

6 Q. Pretty self-explanatory but what's your
7 understanding of this clause?

8 A. It shows that resolution 15 which we've actually
9 never seen was actually adopted.

10 Q. And why was this important?

11 A. Because Rae Lamothe was the tribal general counsel
12 for the GT Tribe and this was going to be a conflict waiver
13 for her.

14 Q. What was was it your understanding at the time of
15 this resolution this whereas clause was true?

16 A. Yes.

17 Q. Is it still your belief this this whereas clause
18 is true?

19 A. Yes.

20 Q. Move to the next whereas clause please?

21 A. Whereas in December 2001, Martin Alcala Virginia
22 Carmelo, Shirley Machado and Edgar Perez in their
23 individual capacities received notices of termination of
24 this tribal membership from the tribal eye and the
25 Gabrielino Tongva not pour profit corporation.

26 Q. At the time of this resolution did you have
27 personal knowledge as to this whereas statement?

28 A. They were very upset about it, they talked to Rae

1 about it and I knew that they were very upset, in tribal
2 council meetings they were talking about that.

3 Q. From your understanding what's the point of
4 including this whereas clause?

5 A. Well because there are -- those people are going
6 to see over the fact that they got terminated from the San
7 Gabriel group that they were part of?

8 A. Not all of the tribal council members were part of
9 that, but they were.

10 Q. And was it important for your belief, this was
11 important to include in this resolution?

12 A. I didn't write it but it's appropriate -- it was
13 appropriate to me at the time that I saw them sign it.

14 Q. At the time of the resolution did you believe this
15 whereas clause was true?

16 A. Yes.

17 Q. Do you still believe it's true?

18 A. Yes.

19 Q. Move to the next whereas clause please?

20 A. Whereas Martin Alcala Virginia Carmelo Shirley
21 Machado and Edgar Perez in her or his individual capacity,
22 the individuals, whereas the individuals each desires to
23 retain the law offices of Rae Lamothe to represent her or
24 him in a lawsuit against Anthony Morales, the San Gabriel
25 tribal council and the Gabrielino-Tongva not for profit
26 corporation which would challenge the attempted termination
27 notices of each member from the not for profit corporation,
28 the lawsuit.

1 Q. Please explain your understanding of this whereas
2 clause?

3 A. Well they wanted Rae Lamothe to represent them in
4 the lawsuit to -- to challenge the fact that they were
5 thrown out as the San Gabriel tribal council. So rather
6 than say well that makes sense we've got our tribal council
7 they've got theirs, they said no no no, we want to be part
8 of both of them.

9 Q. Was this an important clause for you and your law
10 offices?

11 A. No, no. We had -- law offices had nothing Then In
12 2000 do with GT Tribe and did not want to do -- be involved
13 in this litigation, Sam Dunlap insisted on it and from my
14 knowledge of the dispute, this looked appropriate.

15 Q. At the time of this resolution, did you believe
16 this whereas clause was true?

17 A. Yes.

18 Q. Do you still believe it today?

19 A. Yes.

20 Q. Next whereas clause please?

21 A. Whereas there exists the potential for a conflict
22 of interest between the individuals in the lawsuit and the
23 Gabrielino tribe in its daily affairs, in part because the
24 interest and objectives of the individuals and of the tribe
25 may be in competition, further the interest of the
26 individuals in the lawsuit and of the tribe on certain
27 issues are or may become behind consistent with the
28 interests and objectives of the other.

1 Q. Please explain your understanding of this at the
2 time of the resolution?

3 A. This is -- this struck me as typical conflict of
4 interest language that Rae had come up with so I didn't
5 really understand exactly what it meant but it looked
6 pretty typical of conflict of interest waivers that I've
7 seen in other circumstances however at the time and I agree
8 now, there was always the problem and this is if you lose
9 and there's a judgment against you, then you're going to be
10 trying to grab the tribes money to pay that judgment and
11 that's exactly what became a huge issue with these guys is
12 that they lost the lawsuit and they went absolutely for the
13 tribes money and grabbed it out of the casino project.

14 Q. At the time of this resolution was it your belief
15 that this whereas clause was true?

16 A. Yes.

17 Q. And is it still I couldn't belief?

18 A. Yes.

19 Q. Let me ask you, did Ms. Lamothe ever have you done
20 a conflict waiver as law offices of Jonathan Stein or for
21 you personally or in any context for work with the tribe?

22 A. No. There was no sense that I might somehow be
23 deemed the attorney for the tribe and so a conflict waiver
24 wasn't needed. The sense then was exactly the opposite of
25 what they're putting forward in trial now that somehow I
26 was the lawyer for the tribe.

27 Q. Did Ms. Lamothe even discuss this issue with you,
28 to your memory?

1 A. No. And it didn't occur to me because I was
2 relying on the SMDC agreement so I wasn't like oh agree
3 let's just make another document like this and let's have
4 them sign two of them instead of one s it never occurred to
5 me, it never occurred to her.

6 Q. Moving on to the second page of this document,
7 there's another whereas clause, please read this?

8 A. Whereas cooperation between individuals in the
9 lawsuit and the tribe in pursuit of their ultimate goals
10 may be mutually beneficial and may allow each obtain
11 benefits that would be impossible or impractical for either
12 to obtain without such cooperation.

13 Q. Please explain your understanding of this whereas
14 clause?

15 A. This appears at the time and it appears today that
16 it's pretty typical conflict waiver language that you're
17 showing that a waiver is appropriate because you're working
18 together even in the face of a potential conflict would
19 give you greater ear benefits.

20 Q. At the time of this resolution did you believe
21 this was true?

22 A. I didn't know. I actually had -- I thought the
23 lawsuit was a stupid idea from day one.

24 Q. Okay. And same answer as to your interpretation
25 of this today?

26 A. Yes.

27 Q. Let's move on to the next whereas clause, please
28 read that whereas **[-R]** having **[K-RBD]** the potential

1 conflicts of interest and potential benefits of Rae Lamothe
2 representing this individual [TRO] in the lawsuit the tribe
3 wishes to waive any any conflict of interest?

4 Q. To the extent you know what was the purpose of
5 this whereas clause?

6 A. Well this was the natural follow on language that
7 you see in most conflict waiver, that they've waived the
8 conflicts, they've waived the benefits and they're happy to
9 waive the conflicts in light of that.

10 Q. And as to you or Saint Monica development was this
11 an important clause?

12 A. No not at all.

13 Q. As you sit here today do you believe this is true
14 what's complained in this whereas?

15 A. I believe that it's true that the tribe waived the
16 conflict but in light of the conflicts and the benefits as
17 it turns out, it wasn't at all in the best interest of the
18 tribe to waive that conflict because the decision makers
19 came and took 60 grand out of the casino project and paid
20 their own liability with it.

21 Q. Next whereas clause, please?

22 A. Whereas Rae Lamothe presented a conflict of waiver
23 letter, the waiver to the individuals and the tribal
24 council.

25 Q. To your understanding what's the purpose of this
26 clause?

27 A. It's to show that the individuals also had a
28 waiver letter that they signed.

1 Q. Was this important to you or SMDC?

2 A. No.

3 Q. At the time you entered into -- I'm sorry at the
4 time of this resolution did you believe this was accurate
5 to your knowledge?

6 A. Yes.

7 Q. And do you still believe it's accurate as you sit
8 here today?

9 A. I'm not -- I'm not sure, simply because I don't
10 remember the letter or the -- whether the individual signed
11 the letter, I don't really recollect that specifically, I
12 assume that they did.

13 Q. We now just have a few, just three it be resolved
14 clauses. Please read the first therefor be it resolved?

15 A. Therefor be it resolved conflict of interest
16 between law offices of Rae Lamothe as counsel for the
17 individuals in the lawsuit on the one hand and Rae Lamothe
18 as tribal general counsel on the other be and hereby is
19 waived.

20 Q. Your understanding of that at the time?

21 A. That was the official action of the tribe which is
22 what these resolutions were for is to maybe it an official
23 action of the tribe, that the tribe was officially waiving
24 it's conflict of interest in writing of this resolution.

25 Q. At the time of this resolution did you believe
26 this there for clause to be true?

27 A. Yes.

28 Q. And do you still believe it's true as you sit here

1 today?

2 A. Yes I saw them sign it and it was conscious I saw
3 hem waive it.

4 Q. The next be it resolved?

5 A. Be it resolved further, usurp Sam Dunlap as tribal
6 secretary be and hereby is authorized to execute the
7 conflict of the interest waiver attached here to as Exhibit
8 A.

9 Q. What's your understanding of this clause?

10 A. That they authorize Sam Dunlap to be the signatory
11 on the actual conflict waiver letter.

12 Q. And have you seen a document, I believe we marked
13 it as 251, Plaintiffs, the conflict of interest waiver that
14 Ms. Lamothe testified to, do you believe that?

15 A. If I can just take a moment to see it.

16 Q. Yeah I think I have it here, and I know -- oh I'm
17 sorry I don't think we have, that was her retainer
18 agreement. Do you recall seeing a conflict of interest
19 waiver for Ms. Lamothe?

20 A. I recall Sam Dunlap signing an additional document
21 besides his signature of this document.

22 Q. Okay.

23 THE COURT: And there's no attachment A again to
24 this.

25 MR. FORDYCE: Your Honor is correct, I don't see
26 an attachment.

27 THE COURT: And it's nowhere else in our --.

28 MR. FORDYCE: I don't believe so.

1 MS. IBARRA: Which one.

2 MR. STEIN: The conflict of interest of Rae
3 Lamothe.

4 MS. IBARRA: So there's a separate one for Rae
5 Lamothe.

6 MR. STEIN: Well it's the time has passed it's 15
7 years of this document so it is what it is.

8 Q. Mr. Stein at the time of this resolution, did you
9 believe this be it resolved clause was true?

10 A. Yes.

11 Q. And do you still believe it to be true today?

12 A. Yes.

13 Q. Please read the last be it resolved further?

14 A. Be it resolved further that the officers of the
15 council be and they hereby are authorized and empowered to
16 do or cause to be done such further acts as may be deemed
17 necessary or appropriate to carry out the purposes and
18 intent of the foregoing resolution.

19 Q. What's your understanding of that clause?

20 A. This was the typical covenant to go forward and be
21 cooperative with that so it was in there for that purpose.

22 Q. At the time of the resolution did you believe it
23 was true?

24 A. Yes.

25 Q. And do you still believe it today?

26 A. Yes.

27 Q. And we've actually discussed already the
28 certification, we see the signature blocks unsigned in this

1 particular iteration of the document. Is it your testimony
2 that you have seen a signed version of this document?

3 A. Yes.

4 Q. .

5 THE COURT: Rae Lamothe is not -- well her
6 signature -- she doesn't have a signature block on here?

7 A. The court has mentioned that earlier. The habits
8 were not to have the tribal general counsel be a signatory
9 on tribal council resolutions, rather just having the
10 tribal council members and then the secretary who is the
11 member is part of the back and forth of you guys are the
12 tribal council, you're the tribal secretary and we're
13 saying that about each other.

14 MR. FORDYCE: Okay let's move on, and again we are
15 now going to continue going through the documents
16 introduced by Plaintiff's to suggest amongst other issues
17 an attorney-client relationship. Mr. Stein we looked at it
18 briefly yesterday but I would like to turn you back to --
19 this is in Plaintiffs book one, this is the Attorney
20 General Lockyer letter, Exhibit 32, and we're just going to
21 touch on this briefly.

22 THE COURT: Are we in Plaintiffs book now.

23 MR. FORDYCE: Yes Your Honor and I believe -- let
24 me take a quick look at it.

25 THE COURT: I thought I heard you said 32.

26 MR. FORDYCE: I did.

27 MS. IBARRA: That's book one.

28 THE COURT: Yes, I am there.

1 A. Exhibit 32.

2 MR. FORDYCE: Yeah that's correct Mr. Stein.

3 A. The Lockyer letter, yes.

4 THE COURT: I have a question about this, it's not
5 a letter, It doesn't look like it's addressed, you call it
6 the Lockyer letter, to whom was this document addressed
7 because it doesn't have a salutation, it just says re:
8 Meeting with Attorney General Bill Lockyer and then it
9 starts the Attorney General is asked to interpret federal
10 law, but then it's signed, it has a signature block, a
11 stand alone signature block by Mr. Stein, so Mr. Stein what
12 did you intend it this to be, is it a letter to those
13 people on the -- or a memo or something?

14 A. No no.

15 THE COURT: Because it's signed but I'm not sure
16 what it's meant to be.

17 A. Sure. As I testified yesterday, this letter was
18 formerly.

19 THE COURT: Oh yeah?

20 A. Was formally present today a meeting of about 30
21 odd people so it was meant to be a presentation to them,
22 and that's why it says re: Meeting with Attorney General
23 Lockyer and then you if look on the second page and each
24 page in the top heading.

25 THE COURT: Yes?

26 A. It shows it's Attorney General bill Lockyer
27 meeting on April 6.

28 THE COURT: So it was address today 30 people or

1 is that what you're saying or presented this letter?

2 A. It was presented to 30 people that were attending
3 at the meeting and that's why it's re: Meeting and the
4 second page Attorney General bill Lockyer meeting on April
5 six.

6 THE COURT: Yes I see that, it's just I wasn't
7 clear?

8 A. Yeah it's a clear confusing.

9 THE COURT: Okay?

10 A. This is the standard stationery that the tribe
11 used until it started getting a more designed stationary,
12 so this same stationary was used for every purpose.

13 MR. FORDYCE: And Your Honor it's quite funny, if
14 you saw my outline that was exactly if I first question is
15 who was the intended recipient.

16 Q. So Mr. Stein to be clear this document was not
17 specifically for tribal council is that correct?

18 A. No there were members of the tribal council that
19 were at the meeting it was aimed at the 32 recipients of
20 the meeting and we actually -- we had to drag through the
21 airports from LAX to southwest -- to Sacramento, this
22 heavy, you have know bag kind of Costco style bag to carry
23 32 copies of this, you know Five, six-page document.

24 Q. And to be clear, the last page of Exhibit 32 is a
25 bio of law offices of Jonathan Stein is that correct?

26 A. Yeah that was for bill and -- who knew me but all
27 the other guys didn't know me, the several justices from
28 the department of justice, the people that were charged

1 with tribal compact negotiation, for them to see who I was.

2 Q. If it was intended for the tribal council would
3 you have felt the need to include your bio?

4 A. As of 2004, no because we had a contract we
5 entered into three years and one month earlier so we had
6 been working together for three years, so they wouldn't
7 need a buy oh from me.

8 Q. During the course of testimony in this matter, Ms.
9 Carmelo had testified that she didn't know what you were
10 doing regarding this meeting with Mr. Lockyer but you
11 testified that she attended the meeting is that correct?

12 A. She attended the meeting, we actually flue up
13 together and we had lunch after the meeting and hung out at
14 the airport for several hours so I can't imagine that her
15 testimony is accurate, it may be 15 years later she's
16 forgotten how much she knew.

17 Q. Well to the extent that you know, please don't
18 guess or speculate, do you know --.

19 MS. IBARRA: Yeah lacks foundation.

20 MR. FORDYCE: Well I'm asking if he knows.

21 Q. Do you know why she would say she didn't have
22 knowledge of this when she attended the meeting.

23 THE COURT: Wait a minute, repeat the question.

24 MR. FORDYCE: Do you know why Ms. Carmelo, do you
25 have any understanding as to why Ms. Carmelo would testify
26 now that she had no knowledge of the meeting with Mr.
27 Lockyer and this document when she attended the meeting,
28 just if you know?

1 A. Well --.

2 MS. IBARRA: I'm going to object to the question
3 because it may misstate her testimony, I don't recall what
4 her testimony was about this.

5 THE COURT: Okay, the record speaks.

6 MS. IBARRA: Okay.

7 MR. FORDYCE: Her testimony is her testimony.

8 THE COURT: The question is --.

9 MS. IBARRA: If she testified in that way.

10 Q. BY MR. FORDYCE: Do you know why there's a
11 contradiction -- what appears to be a contradicts between
12 what actually happened and her testimony?

13 A. No, I don't.

14 MR. FORDYCE: And that's Ms. Carmelo?

15 A. No, I don't.

16 MS. IBARRA: Can you ask her if she testified --.

17 THE COURT: He says he doesn't know.

18 MR. FORDYCE: He doesn't know.

19 THE COURT: And let's move on.

20 Q. BY MR. FORDYCE: And again Mr. Stein what was the
21 purpose of Exhibit 32?

22 A. The purpose of Exhibit 32 was to make the formal
23 presentation to these 32 people including you know the
24 football player and actor James brown and the highest level
25 attorneys at the Department of Justice and the Attorney
26 General himself that you know this was a serious way to go
27 forward that doesn't require federal recognition and that
28 the State of California if it wanted the tax revenues, if

1 it wanted to see justice down for the Gabrielino people
2 could go forward and allow them to have a casino.

3 Q. So was this part of SMDC's lobbying activity or
4 development activity?

5 A. Well it would be because the Attorney General was
6 being presented to by law it's a lobbying activity and SMDC
7 and myself personally were registered as lobbyists because
8 the laws are really clear that you've got to do that if
9 you're going to ask the Attorney General to do something
10 and what we were asking him to do is to say yes, it is
11 legally okay from the State of California's point of view
12 to have a casino in Los Angeles that you don't need federal
13 recognition for and that would have gigantic public policy
14 ramifications.

15 Q. Do you consider this this is practicing law for
16 the tribe?

17 A. No I consider it was lobbying under the political
18 reform act and under the lobbying contract I had with the
19 tribe and under the very clear requirements that you have
20 in Sacramento to talk to public officials in a manner that
21 can be traced and disclosed.

22 Q. Did you communicate the contents of Exhibit 32 to
23 the tribal council?

24 A. Yes to the ones that didn't go, we were elated, we
25 were so pleased with how the meeting went, it went all
26 morning long, bill Lockyer stayed there personally for 90
27 percent of the meeting, they were re recipient tiff to this
28 interpretation and they loved the idea that you know

1 convicts released from prison could be monitored by James
2 Brown's organization and put to work in Compton, I mean a
3 casino in Compton is sort of like a dream come true if
4 you're trying to fix some of the problems of southeast Los
5 Angeles County.

6 Q. And Mr. Stein I just want to go to have a clear
7 record again with our pronounce when you said they were re
8 excited and they liked the idea to whom were you referring?

9 A. The tribal council, the tribal council -- I'm
10 sorry I have used two different they's, the tribal council
11 was extremely excited and the tribal council was excited
12 because the officials of the State of California were very
13 receptive to the idea and so they saw that and they saw
14 that they were making true progress towards a casino with
15 this meeting and they were elated, the tribal council was
16 elated.

17 Q. Okay thank you again it's just to be very clear
18 for the record. And I just again, because it was a
19 document so heavily relied on by Plaintiff's to show the
20 attorney-client relationship, I just want to reference
21 exhibit 569, we'll move through briefly, we're not going to
22 go through and read clauses again, just to be absolutely
23 clear?

24 A. The SMDC --.

25 Q. That is the dreaded SMDC agreement?

26 A. I can probably answer questions you know without
27 looking at it.

28 Q. Okay. Who wrote the original resolution?

1 A. Seyfarth Shaw.

2 Q. How often did you meet with the tribal council in
3 general concerning the SMDC agreement?

4 A. Well in resolution 10 there was a whole series of
5 meetings by myself, these proceedings that focused on the
6 meetings with Steve Otto but in fact the most important
7 meetings were with me so as SMDC -- as head of SMDC I could
8 explain to them, this is what we'll do if you higher us as
9 an independent contractor.

10 Q. And your understanding at the time and way back in
11 late 2001, did you understand or know whether the tribe had
12 counsel or not?

13 A. Again they had had had Steve Otto in the manner
14 much discussed. After Steve Otto came Hugh McMullin who I
15 had forgotten about earlier, and then after him -- them
16 came Hugh McMullin's replacement who he referred, Ed
17 Hamburger and then -- and that was all in very quick
18 sequence, that was December of 2001 through April of 2002.
19 And then.

20 THE COURT: So who was the council --?

21 A. I'm sorry, I'm sorry, I'm sorry, -- I just
22 screwed that up H December 2000 through April of 2001, so
23 in that five-month period you had Steve Otto, then Hugh
24 McMullin, then Ed Hamburger, and then -- and Rae Lamothe
25 came on on May 1.

26 THE COURT: Okay so?

27 A. For five years.

28 THE COURT: Who was the attorney who you were

1 working with with respect to the SMDC agreement, which one
2 of these people or attorneys.

3 A. Steve Otto.

4 THE COURT: Steve Otto?

5 A. And then resolution 10 was adopted without it.

6 MR. FORDYCE: Actually Your Honor -- I'm sorry?

7 A. And then.

8 THE COURT: Am I anticipating your examination.

9 MR. FORDYCE: No but what I did want to do is just
10 lay a little bit of foundation and ask Mr. Stein whether he
11 had it counsel during the negotiations of the SMDC
12 agreement?

13 A. Well once again, why don't we answer the Court's
14 question first.

15 MR. FORDYCE: That's fine the Court's question
16 first, the court takes prior fee?

17 A. So on the GT Tribe side, Steve Otto leave of
18 absence had whatever his involvement was.

19 THE COURT: Well that's what I'm asking, what was
20 his involvement were you negotiating with him on the SMDC
21 agreement?

22 A. No I never negotiated with him because he quit
23 right when I was going to start negotiating with him.

24 THE COURT: All right.

25 A. Rather he spent all his time understanding this
26 big thick complex agreement with the tribe, he then Kim
27 came back for the \$800 an hour request for payment, I said
28 I just can't afford that, he said I'm going to quit and I'm

1 also going to send you a nasty letter, and I said that's
2 your -- I won't answer it, go ahead.

3 THE COURT: So he was asking you to pay for the
4 tribes legal fees?

5 A. Right.

6 THE COURT: Why would he do that?

7 A. Because the tribe had no money.

8 THE COURT: Okay?

9 A. And he wanted to get paid and I had told him, you
10 should come -- you should take a deal with -- Rae Lamothe
11 eventually took the deal which is you know accruing 10,000
12 a month for not that much work and then if we get an
13 investment it all gets paid and his view was no I want to
14 be paid double my hourly rate to even walk in the room.

15 THE COURT: So Otto was the person you were
16 negotiating with when you -- the terms of the SMDC
17 agreement?

18 A. Right. And he was -- he was chief Velasquez's
19 lawyer.

20 THE COURT: So he was the tribal counsel you were
21 negotiating with with respect to the terms of?

22 A. The first time rather.

23 MS. IBARRA: I'm going to object because that
24 misstates his testimony.

25 THE COURT: Who.

26 MS. IBARRA: I don't think Mr. Stein called him
27 tribal counsel?

28 A. Yeah I did but other people have not I'm trying to

1 be respectful.

2 THE COURT: You're calling Otto tribal counsel it
3 was your understanding he was tribal counsel when you were
4 negotiating the terms of the SMDC agreement?

5 A. That's right, that's right, but he quit very early
6 so again it was -- it was not -- it's not like I'm
7 saying -- they had an opportunity for legal counsel but
8 they blew their opportunity mainly because they had no
9 money.

10 MS. IBARRA: Mr. Stein just says he was Mr.
11 Velasquez's counsel?

12 A. I'm sorry?

13 MS. IBARRA: I thought --.

14 THE COURT: Well is he --?

15 A. That's where he came from; that's where he came
16 from.

17 THE COURT: So he was -- he was representing the
18 tribe?

19 A. Yeah.

20 THE COURT: Over the terms of the agreement, and
21 then he quit before signing, is that what you're saying?

22 A. Right.

23 THE COURT: That was the letter that he sent?

24 A. Yeah, right.

25 THE COURT: Where he disputes being tribal counsel
26 but nonetheless?

27 A. Sure.

28 THE COURT: Had you say you actually negotiated

1 the terms with him?

2 A. No I said the opposite to you.

3 THE COURT: Oh?

4 A. To the court, I said the opposite to the court,
5 forgive me.

6 THE COURT: So you didn't negotiate the terms of
7 the SMDC agreement?

8 A. He spent all his time explaining the terms and
9 talking about the terms with the tribal council, he came
10 back to me aft what I thought was going to be our first
11 negotiating session and said hey before we get in t I need
12 payment now and it's 800 bucks a month -- 800 bucks an hour
13 and I said well what's your normal hourly rate, and he said
14 300 and whatever.

15 THE COURT: So you didn't negotiate any terms
16 with?

17 A. That's exactly right.

18 THE COURT: With Otto?

19 A. (Ditto).

20 THE COURT: And it was your belief that he was
21 talking to the tribe about the terms in some way?

22 A. Right. So what happened is.

23 THE COURT: But you weren't in on those
24 conversations it's just your belief that he was doing that?

25 A. Yeah based on their statements to me f you
26 remember resolution 10, maybe we should look at resolution
27 10, it has the whole thing laid out, every meeting is late
28 out in the whereas clause of resolution 10 and maybe Niall

1 if I can --.

2 MR. FORDYCE: Sure I think it's -- it's in our
3 Defendants first notebook and.

4 THE COURT: All right well just read it talks
5 about Otto and representing them.

6 MR. FORDYCE: So Mr. Stein that's now exhibit
7 marked as Exhibit 154 two and if --?

8 A. It's just one whereas clause and we've been
9 through it several times.

10 MR. FORDYCE: Yeah?

11 A. 1542.

12 Q. Yep that's correct and if you'll point the court
13 to the -- I believe it's on Bates '04 '98, is that to what
14 you're referring.

15 THE COURT: Resolution 10, when was that -- what's
16 the date of resolution 10?

17 A. This is March 4, 2001 and again this is the first
18 of six different approvals over two years so -- so any --.

19 THE COURT: Where is it -- I'm just trying to
20 figure out where two says there that Otto was either
21 meeting with them or explaining the terms to them or -- go
22 ahead and just read it into the record so I --?

23 A. Okay perfect, thank you, thank you. whereas the
24 council little I received a draft of the development
25 agreement and this resolution.

26 THE COURT: The council who is the council is
27 there somewhere in there that says Otto?

28 A. No the tribal council.

1 THE COURT: Oh there you go?

2 A. I see the reading it's council and it's tribal
3 council and you can tell from the spelling of course.

4 Q. BY MR. FORDYCE: Mr. Stein real quickly the short
5 whereas clause on that page, I think that references Mr.
6 Otto?

7 A. Again let me just read this one if I can.

8 Q. Orange as you like?

9 A. Oh okay very good, very good, so above there,
10 whereas the tribal council has been advised by develop tore
11 seek legal advice from independent counsel regarding the
12 development agreement and afforded the opportunity to do so
13 and Mr. Otto was given and reviewed a draft of the
14 development agreement. And then skipping the next whereas
15 clause.

16 THE COURT: Given a draft, okay, all right. It
17 doesn't really say that he reviewed it with the tribe right
18 but --?

19 A. I'm getting there.

20 THE COURT: Okay?

21 A. whereas the tribal council little I, received a
22 draft of the development agreement and this resolution for
23 each counsel member in early December 2000 from Mr. Stein
24 and again if I can depart from the reading at each stage,
25 again that was the SMDC agreement drafted by Tom watts and
26 Ken [SULS] and they drafted the --.

27 MS. IBARRA: Objection misstates --?

28 A. Forgive me and they --.

1 THE COURT: Wait a minute there's an objection.

2 MS. IBARRA: It misstates prior testimony.

3 THE COURT: The court will remember the testimony?

4 A. Again, from my recollection and as confirmed by
5 Ken Sulzer's, the draft of the development agreement was
6 prepared by him and Tom Watt at Seyfarth Shaw and included
7 a set of resolutions that Mr. Watt had written, and so this
8 one that says received a draft of the development agreement
9 and this resolution for each counsel member, tribal council
10 member in early December, 2000 from Mr. Stein, so they got
11 it in early 2000. Little two, the next point, met with Mr.
12 Stein for several hours on or about January 14 to review
13 and make changes to the draft development agreement and
14 this resolution. So the next step is they came back six
15 weeks later and met with me and said we don't like this and
16 we don't like that, or we want this or we want that and I
17 made those changes on behalf of SMDC. Little three, met on
18 its own, this is the tribal council met on its own for
19 several hours on January 27 to discuss the terms and
20 conditions of the draft development agreement and this
21 resolution. So at that time they met on their own separate
22 from me but I knew about the meeting and got a reports back
23 from the meeting that confirmed it and that's how I knew to
24 add this whereas clause. Little four, met a second time
25 with Mr. Stein for several hours on February 11th, 2001 to
26 review a new draft of the development agreement which
27 incorporated previous changes and make further changes to
28 the terms and conditions of the development agreement and

1 this resolution. So again there was more stuff that they
2 wanted to add in there or take out based on long meeting
3 that they had would you tell me, they transmitted that to
4 me, I put it in or took it out as they required or
5 convinced them not to do it and that was that created a new
6 draft of the agreement. Then little Five, tribal general
7 counsel Otto received from Mr. Stein and reviewed a draft
8 of the development agreement and this resolution. And that
9 happened after February 11th, so the draft that was created
10 on September 11th, he received the new draft. And eight
11 people signed it saying he was tribal general counsel at
12 that time. Then little six, the next step was the tribal
13 council met with tribal general counsel for several hours
14 on February 25th to review again the terms and conditions
15 of the development agreement and this resolution and to
16 seek his advice and I was not part of that meeting, I knew
17 about that meeting from reports back and I wrote this into
18 the as one step in the approval process. And little seven,
19 the last step, their meeting here today -- the tribal
20 council's meeting today March 4th, 2001 to give final
21 consideration to and to adopt the development agreement and
22 this resolution as a valid, binding and enforceable
23 obligation of the tribe effective immediately. And that
24 meeting at that time, Steve Otto basically quit, he said
25 you got a big contract, you want a tribal general counsel
26 to sign that contract, I see it right in the contract, it's
27 going to cost you 800 bucks an hour for my time and I said
28 I'm sorry I don't have that kind of money. He says well,

1 you're not going to have a tribal general counsel sign your
2 contract and I said that's fine.

3 THE COURT: Resolution 10 they had a different
4 tribal general counsel at that time?

5 A. No it was --.

6 THE COURT: Who was the tribal general counsel
7 when resolution 10 was -- they didn't have that tribal
8 general counsel when resolution 10 was --?

9 A. That's correct and then --.

10 THE COURT: They had -- okay.

11 A. He had quit.

12 THE COURT: Okay?

13 A. And then resolution 17 was meant to fix that
14 problem in April when they did have a tribal counsel they
15 went back and ratified the SMDC agreement with their tribal
16 general counsel going forward, so number one they had legal
17 advice from tribal general counsel Steve, Number 2.

18 THE COURT: There was no -- I mean Rae Lamothe did
19 all the resolutions for the tribal general counsel right?

20 A. Yes.

21 THE COURT: Who was doing when they didn't have
22 tribal general counsel, for example you said resolution 10
23 is passed there was no general counsel so who was preparing
24 resolution 10?

25 A. I've stated several times Seyfarth Shaw preparing
26 resolution 10. I added this paragraph to reflect what
27 actually happened.

28 MR. FORDYCE: Okay.

1 THE COURT: Okay.

2 Q. So?

3 A. And then when they -- and then that's why
4 resolution 17 affirmed that this was in fact a good
5 approval and had Ed Hamburger and then resolution 37 did it
6 again and resolution 46 did it again and that one was
7 signed by Rae Lamothe and each time they said yeah that
8 action on resolution 10 was an official action of the tribe
9 and it was -- it created our obligations, they're
10 recognizing their obligation the same way you would
11 recognize it today.

12 Q. So Mr. Stein anything in resolution 10 that you
13 believe made you the tribes lawyer?

14 A. Absolutely not, I was -- I was on the other side
15 of the fence, I was on -- I was the SMDC trying to get a
16 contract for the tribe.

17 Q. Is that the same with the later resolutions we've
18 discussed?

19 A. Yes absolutely.

20 Q. Do you have personal knowledge as to whether
21 tribal council members discussed the various resolutions
22 once Ms. Lamothe came on board with her?

23 A. Yes they often had very intelligent questions and
24 they often referred to the fact saying they had talked to
25 her, they said well we talked to Rae about it but I still
26 think dah, dah, dah dah, dah, dah, and this was a typical
27 every day occurrence.

28 Q. To be absolutely clear, did you have input in the

1 later resolutions, did you have input into the later
2 resolutions?

3 A. Yeah absolutely. I would often provide bullet
4 point lists and I would also read them after Rae wrote
5 them, I would read them and say hey you forgot this or hey
6 you've got a typo on this sentence.

7 Q. Let's move quickly to the federal and state gaming
8 laws and the purported legal advice that you gave to the
9 tribe. Do you consider that you gave GT Tribe legal advice
10 concerning federal and state gaming laws?

11 A. No.

12 Q. Why not?

13 A. Because they this tribal general counsel Rae
14 Lamothe and according to her retainer agreement she was
15 supposed to give the tribe all the legal advice on any
16 topics discussed. What I was doing was making reports on
17 behalf of SMDC and those reports included content that was
18 legal in nature.

19 Q. Do you know if these reports were provided to the
20 tribal council members?

21 A. Yes absolutely. When we had our -- you know
22 avoided their phone calls most of the time but when we sat
23 down for our meeting once a month or once a quarter,
24 depending on activity, I would be quite Frank with them and
25 somewhere all their questions and talk at length, it was
26 their chance to find out what was going on with the casino
27 project.

28 Q. Do you know whether any of the tribal council

1 members actually asked their tribal general counsel
2 concerning the content of your reports?

3 A. Well she was there for 80 to 90 percent of the
4 meetings, if not more, Rae was very inform, she had her
5 offices in Saint Monica so it was very easy for her to come
6 over, the tribal council meetings were almost always at
7 night and the -- and they weren't too frequent so there
8 wasn't a feeling that if you missed one it wasn't a billing
9 deal so she was at 0 to 90 percent of them as I recall.
10 And she would be there to explain and interact because we
11 always wanted the casino project to get to work was the
12 tribal council -- I got the impression they didn't really
13 care that much about the tribe, but they wanted to get
14 paid. If we got an investor coming in, they would get
15 their \$3,000 a month accrual plus 3,000 a month going
16 forward, and while they're well educated, nobody enjoyed a
17 very healthy income other than Sam Dunlap. And that was a
18 big deal to them so they were very interested in getting a
19 casino, I was interested in getting the casino on behalf of
20 SMDC and that was the contract to do was to get the casino
21 if we could and to get the investor money that would fund
22 all of this.

23 MS. IBARRA: I'm going to object that it lacks
24 foundation as to what the tribe wanted or cared for.

25 THE COURT: Sustained?

26 A. Let's --.

27 MR. FORDYCE: Well.

28 THE COURT: Answer is stricken.

1 Q. BY MR. FORDYCE: Mr. Stein did SMDC serve to have
2 benefit into your research in the federal and state gaming
3 laws?

4 A. Absolutely, yeah, the idea was to have get an
5 investor that would pay SMDC's 25,000 a month and to get a
6 casino that SMDC would get 10 percent of its slot revenues
7 for about seven years.

8 Q. Did you consider your research in federal and
9 state gaming laws, was this part of the services that were
10 required of SMDC by the SMDC agreement?

11 A. Yes. The idea was SMDC would figure this stuff
12 out so SMDC hired Judy Schwartz in Washington, D.C., SMDC
13 had the council higher can [TKPHRAEUPB] Washington, D.C.,
14 SMDC conducted lobbying services all to the end of getting
15 number one an investor to put in the big money needed to
16 get a casino, and then Number 2 to get the casino itself.

17 Q. Let's move on to another exhibit that's been used
18 by Plaintiff's is that create -- purport to create an
19 attorney relationship. This is going to be in Plaintiffs
20 second volume of exhibits and it's Exhibit 67. This is the
21 fiduciary duty part.

22 MS. IBARRA: '63.

23 MR. STEIN: '67.

24 THE COURT: What volume.

25 MR. FORDYCE: That's the second volume of
26 Plaintiffs Your Honor.

27 MS. IBARRA: We discussed it a lot in the first
28 part of the case.

1 THE CLERK: '67.

2 MS. IBARRA: Yeah it's because we discussed it a
3 lot.

4 THE COURT: What is it.

5 MS. IBARRA: It's the fiduciary duties report, we
6 probably have an extra copy if the court needs it.

7 THE COURT: Okay.

8 MR. FORDYCE: And what I can do is if I have it
9 electronically I can provide the court with ours to look
10 at.

11 THE CLERK: Oh hold on I think I found it.

12 MR. FORDYCE: It looks like Neli may be coming to
13 the rescue.

14 THE CLERK: Oh blank page again?

15 A. Oh no no, look after the blank page.

16 THE CLERK: Where?

17 A. After the blank.

18 THE COURT: You know what she can have our copy.

19 MR. FORDYCE: Oh okay thank you counsel.

20 MS. IBARRA: We have -- because we're very
21 familiar with this one.

22 MR. FORDYCE: And Mr. Stein does your binder have
23 it up there?

24 A. It says blank page in front of you but that's
25 why --.

26 THE COURT: Okay what I have it front of me is
27 something called fiduciary duties report.

28 MR. FORDYCE: That's correct Your Honor dated

1 September 25, 2006.

2 THE COURT: Yes.

3 MR. FORDYCE: Oak very good I think we're all on
4 the same page.

5 Q. Mr. Stein just to lay some foundation, have you
6 seen this document before?

7 A. Yes.

8 Q. What is this document?

9 A. This is Jim McShane's summary to the tribal
10 council and he and I prepared it based on his drafts and I
11 went through it with him to make sure it copied -- it
12 covered all the materials, it was part of our efforts to
13 repair the -- the breach which had occurred between SMDC
14 and the tribal council and it ended up not repairing the
15 breach at all and they fired me three weeks later.

16 MS. IBARRA: I'm going to object that it misstates
17 Mr. McKee's testimony that it was Mr. McKee's work product.

18 MR. FORDYCE: Your Honor that's not what Mr. Stein
19 just testified to, Mr. Stein is testifying as to his
20 recollection as to what this document is and how it was row
21 crated if it disagrees with what Mr. McShane testified to
22 then so be it, but Mr. Stein is entitled to identify and
23 speak to the document and counsel's objection is not
24 stating because she doesn't like his testimony.

25 MS. IBARRA: I'm just stating his I understand
26 [STHEUZ] em- [TEZ] was different?

27 A. His testimony was no different.

28 THE COURT: Okay?

1 A. His testimony was the same as what I just said.

2 THE COURT: Mr. Stein, Mr. Stein remember the
3 rules, you're the witness now?

4 A. Well it's because --.

5 THE COURT: I get to make the rulings.

6 A. Yes, Your Honor.

7 THE COURT: All right. So --

8 A. She keeps pulling legal tricks like this are
9 upsetting.

10 MR. FORDYCE: So your honor. It should just be a
11 proper objection. If she's going to object to misstates
12 Mr. McShane's testimony, that's the grounds for the
13 objection, that's what she needs to say.

14 THE COURT: She said that, okay.

15 MR. FORDYCE: That's not what I heard, but okay.

16 MS. IBARRA: I stated it for the record.

17 THE COURT: What I'm going to do is overrule it
18 with the understanding that Mr. McShane's testimony will be
19 what it is, the court will remember what he said. If it
20 conflicts with what Mr. Stein said the court will have to
21 make a determination as to which person to believe.

22 MR. FORDYCE: Perfect Your Honor thank you.

23 THE COURT: All right? That's kind of how it
24 goes. But I'm not going to stop you from making your
25 objection. You want to make an objection, you want to
26 alert the court that somehow it misstates what was said,
27 you're both free to do that. But I think you both need to
28 understand kind of how this process is going to work.

1 MR. FORDYCE: Yes, Your Honor?

2 A. And Your Honor if I may, and I'm stepping out of
3 my role as a witness, the problem I have is that of Mr.
4 McShane's testimony is 100 percent consistent with what I
5 said, she's trying to have the court remember something
6 differently than what actually occurred. What actually
7 occurred is the same thing and she's saying oh no no no Mr.
8 McShane said something else, he didn't he said the same
9 thing.

10 THE COURT: Okay well?

11 A. And the objection is just a cheap lawyers trick.

12 THE COURT: Well let's put it this way, the
13 testimony -- the transcript is going to show what
14 what Mr. McShane said so if the court wants to look at it
15 later when it has to make a ruling, the court will look at
16 it, to make a to compare to what is being said today, so
17 I'm going to -- like I said, I'm going to overrule the
18 objection but if it comes down to it, I will check.

19 MR. FORDYCE: Thank you Your Honor.

20 Q. Mr. Stein just as a couple of very small points on
21 this document, I draw your attention down to the footer, we
22 have council members identified and it SMDC SMDC
23 represented in the footer?

24 A. Yes SMDC is there, Jonathan Stein, Saint Monday
25 development company and they are -- have the nominal title
26 of tribal development officer.

27 Q. Please explain what you mean by nominal title?

28 A. Well it's actually -- it's part of California law

1 but you can have a title even if you don't work, so if
2 you're an independent contractor selling a product, you can
3 be vice president of marketing for the company whereas in
4 fact you're nothing more than an independent contractor and
5 you have no duties other than as an independent contractor
6 but your business card can say vice president of the
7 company to avoid the embarrassment that the companies too
8 cheap to hire employees to do its marketing and that's
9 wildly done in California, it's widely done around the
10 country.

11 Q. So did this title tribal development officer make
12 you an officer of the tribe?

13 A. No, no there was no resolution appointing me as an
14 officer and there was no official action appointing me as
15 an officer, it was just a way for people to understand hey
16 this person's in charge of the casino project for the tribe
17 without going into oh we're an independent contractor and
18 oh we're a separate entity and oh we don't have any
19 fiduciary duties.

20 Q. And you see right who that tribal general counsel
21 law offices of the Rae Lamothe?

22 A. Yes always stationary always listed Rae Lamothe
23 for the tribal council for the five years that she was
24 there.

25 THE COURT: All the stationary reflected her off
26 the letterhead.

27 A. Yes this is the --.

28 THE COURT: Oh this one I'm talking about five

1 years ago, was she always listed on letterhead going back
2 five years?

3 A. Yes yes as a matter of fact you saw the Bill
4 Lockyer letterhead, exhibit 32, that was the Old letterhead
5 and then we replaced that with this letterhead so.

6 THE COURT: So Rae Lamothe is listed on the tribe
7 letterhead on all the tribe again correspondence and memos,
8 et cetera, right.

9 A. Yes.

10 THE COURT: Okay.

11 MR. FORDYCE:

12 Q. And is it your understanding on September 19, 2006
13 that Ms. Lamothe was still general counsel for the tribe?

14 A. Yes.

15 Q. And is it --.

16 A. As of September 19th, 2006 no forgive me she had
17 just left several months earlier and Elizabeth Aronson
18 replaced her, we didn't buy new stationary.

19 Q. That was going to be my next question. Did the
20 tribe have general council to your understanding at the
21 time of this fiduciary duty point?

22 A. It actually was Elizabeth Aronson and her formal
23 title was assistant general counsel because no resolution
24 had yet been made to make her full general counsel.

25 Q. You've heard testimony conscious or tell me if you
26 have. Do you recall testimony in this matter that this,
27 Plaintiffs '67 was a good example as to why you were the
28 tribes attorney, do you recall such testimony?

1 A. Yes.

2 Q. Do you agree with this categorization?

3 A. Absolutely no.

4 Q. Why not?

5 A. Because Elizabeth Aronson was the tribes attorney
6 and the Sheppard Mullin attorney Jim McShane was the tribes
7 attorney and I was adverse, they eventually fired me and
8 there was a big Tuesday he will over the tribes money which
9 was 100 percent from the investors and I tried to keep them
10 from diverting the money but I was unsuccessful, they
11 diverted a great deal of the money, casino money to non
12 casino purposes.

13 THE COURT: So again remind me, they've got
14 Elizabeth Aronson so why did they need McShane or Shane?

15 A. He was hopefully coming in as a peace maker
16 because I had told the tribe that I wasn't going to work
17 with Elizabeth Aronson and I want wanted her -- the tribe
18 to accept or resignation I have wanted her to resign.

19 THE COURT: So you have wanted Aronson to resign
20 because you didn't want to work with her any more?

21 A. Right right and --.

22 THE COURT: And so Shane came in?

23 A. And McShane came in to try to make peace.

24 THE COURT: As who's lawyer?

25 A. As GT Tribe's lawyer and I -- it was as GT Tribe's
26 lawyer and that was a decision made by the Court because we
27 actually had sued Sheppard Mullin.

28 MS. IBARRA: By the Court?

1 A. And said --.

2 THE COURT: By the Court?

3 A. This court, yeah, not you but one of the earlier
4 ideas.

5 THE COURT: Did what?

6 A. Sheppard Mullin was sued in this litigation and
7 their whole defense.

8 THE COURT: Who sued them?

9 A. SMDC.

10 THE COURT: Oh okay, all right?

11 A. After the October 3 dismissal and no payment, we
12 sued Sheppard Mullin, we sued Libra we sued tribal council
13 members individually and the tribe, it was a nasty time.

14 THE COURT: All right?

15 A. Nasty angry time.

16 MR. FORDYCE: Okay.

17 THE COURT: So McShane came in as tribal counsel
18 even though there was Aronson because you wanted to fire --
19 you wanted the tribe to fire Aronson and so what was
20 McShane going to do for the tribe?

21 A. He was going to make peace where I could either
22 begin working with Aronson or not. The reason that I
23 wanted to fire Aronson is she was presiding over diversion
24 of the casino money to individual councilmen. She was
25 letting individual councilmen pocket in their own personal
26 pockets the tribe's money in violation of the investor
27 agreement and in violation of their fiduciary duties to the
28 tribe. And I said hey listen, you may not have much money

1 but I've got enough that I don't want to be liable to the
2 investors and I don't want to be part of a fiduciary duty
3 breach where you're cut will go checks from the tribe's
4 accounts to individuals or individual councilmen.

5 THE COURT: So me question is why didn't you just
6 walk away from the deal I guess is my question?

7 A. Because if I walked away from the deal I'd be
8 leaving millions of dollars on the table. Eventually
9 that's what happened.

10 THE COURT: Okay. And no judge had a part in this
11 at this time, because you kind of alluded to some judge --

12 A. Right.

13 THE COURT: -- doing something. What was the
14 judge doing?

15 A. Well, let me give you another piece of the story
16 and we'll get there. Jim McShane on behalf of the tribe
17 sued me, sued SMDC. This lawsuit started based on a
18 complaint that Jim McShane wrote for the tribal council.
19 So the idea that he was somebody else's lawyer was pretty
20 farfetched. When we when we sued everybody involved --
21 when Seyfarth Shaw on behalf of SMDC sued everybody
22 involved, their main defense was you can't sue us, we were
23 only acting as a counsel, we were only a principle, we were
24 only acting at all times on behalf of GT Tribe so for in
25 court to come back -- for them to claim in and out that
26 somehow Jim McShane was not their lawyer is exactly the
27 opposite of all the papers that were sent in and all the
28 court rules on those papers where they said you can't sue

1 husband because we were the GT Tribe's lawyer.

2 THE COURT: Okay.

3 MS. IBARRA: Objection misstates my objection,
4 that wasn't my objection nothing to do with that.

5 THE COURT: Oaf all right. What does the judge
6 have to do with this?

7 A. The court found in these papers, you are -- he was
8 the GT Tribe lawyer and therefore, you have to go through
9 the procedural formalities.

10 THE COURT: You meaning who?

11 A. SMDC had to --.

12 THE COURT: The court found this in writing
13 somewhere?

14 A. In a court opinion in a docket.

15 THE COURT: Okay.

16 MS. IBARRA: I'm going to object that it misstates
17 the court record, so we can judicial sued notice?

18 A. No it's exactly what the court record is.

19 THE COURT: I will take judicial notice. I want
20 to hear what Mr. Stein thinks it says, Mr. Stein thinks it
21 says --?

22 A. Okay under CCP 17 14 maybe I'm wrong, under CCP
23 1714 if you sue a lawyer and his client at the same time
24 you've got to fulfill a multi part test otherwise the
25 lawyer gets right out of the lawyer right up front. So
26 right up front Mr. McShane on behalf of GT Tribe sued SMDC
27 and me personally. He beat us to court, this should have
28 been a lawsuit saying we need the \$2,000,000 that you

1 refused to pay us when you terminated SMDC, they beat us to
2 court by two hours, by two hours.

3 THE COURT: So the court found in this opinion,
4 are you going to answer my question or are you just going
5 to talk? I need you to answer my question?

6 A. I'm sorry. Sheppard Mullin was named as a party.
7 So their immediate response to the filing of our complaint
8 two hours later was to bring a motion saying under 17 14
9 you can't sue us because every -- at all times we were the
10 attorney for GT Tribe.

11 THE COURT: And the court found what?

12 A. You are the attorney for GT Tribe.

13 THE COURT: I meaning who?

14 A. McShane and Sheppard Mullin but SMDC fulfilled the
15 multi part test and that should have been judge bitter man
16 d bitter man in the west district.

17 MS. IBARRA: And I think there was an appeal and
18 there was a settlement of the action between Sheppard
19 Mullin and SMDC, Mr. Stein, who sued them. So the appeal
20 overturned, I think there was an anti-SLAPP motion, they
21 lost the anti-SLAPP motion, there was an appeal of the
22 anti-SLAPP motion and then after the appeal --

23 A. We won the anti-SLAPP motion. SMDC won the
24 anti-SLAPP motion.

25 MS. IBARRA: But there was an appeal of that
26 correct? It predates me.

27 A. Sheppard Mullin appealed the fact that they lost,
28 and they lost the appeal. So they lost the motion and they

1 lost the appeal.

2 MS. IBARRA: And then after that there was a
3 settlement?

4 A. There was a nice little settlement.

5 MS. IBARRA: None of this is binding?

6 A. There was a nice little settlement with Sheppard
7 Mullin after that, but all of this happened before all of
8 that; all of this happened before all of that.

9 THE COURT: So the court -- this is a Biterman
10 court, but it's disputed as to whether that has been found
11 valid on appeal. There's some appellate issues. But
12 anyway, Biterman found that McShane and Shepherd were the
13 tribe's attorneys?

14 A. Yes.

15 MS. IBARRA: And the settlement happened after
16 Sheppard Mullin?

17 A. Forgive me, forgive me.

18 THE COURT: No let her?

19 A. Oh I'm sorry.

20 THE COURT: I'm confused Mr. Stein. Okay.

21 MS. IBARRA: Because at this point I am
22 appellate -- I am counsel for the tribe on peel. So
23 shepherd in the underlying action in trial court files a
24 motion for summary judgment there's never an opposition
25 filed instead there's a settlement procedurally that's what
26 happened.

27 THE COURT: All right.

28 MR. FORDYCE: So back to exhibit '67, so Mr. Stein

1 who authorized exhibit much?

2 A. Who authorized it?

3 Q. Yeah.

4 A. This was Jim McShane's report to the tribal
5 council which had he gave to them on the night of September
6 at a tribal council hearing.

7 Q. And Mr. Stein I'd like to show you an exhibit that
8 has been previously identified on July 12th at defense 15
9 10, I have actually have extra copies if the court needs a
10 copy and if opposing counsel needs a copy but this was
11 identified on July 12th.

12 MS. IBARRA: This is exhibit.

13 MR. FORDYCE: This is Exhibit 15 10. Would Your
14 Honor like. I'll put a number on this so we don't get
15 confused. I've got lots of copy, does the core need a
16 copy.

17 THE COURT: Of what.

18 MR. FORDYCE: Of Exhibit 15 10.

19 THE COURT: Sure.

20 Q. BY MR. FORDYCE: Just take a quick look at that if
21 you would. Tell me when I've had a chance to review it Mr.
22 Stein. Have you had a chance?

23 A. Yes.

24 Q. Okay. What is exhibit 15 10?

25 A. These are e-mails to the tribal council and to
26 myself from Mr. McShane saying that I had invited him to a
27 tribal council meeting and below that was my e-mail to the
28 tribal council saying I hope you'll come to the meeting,

1 who Jim McShane was and he'll be interviewed by the tribal
2 council and then Ms. Aronson who was representing the tribe
3 in the Hollywood park litigation also would be turning that
4 over to Jim and then another partners of his would be in
5 charge of a -- of the next advance which was going to be
6 2.5 million if we got there, that would be sometime in
7 December or January.

8 Q. Is there a connection between Exhibit 15 10 and
9 Exhibit 67?

10 A. Yeah this -- this was the e-mail for the meeting
11 at which Jim McShane presented the fiduciary duties report.

12 Q. And to be absolutely clear, the meeting -- did the
13 meeting take place on September 19th, 2006 do you remember?

14 A. Yes I believe it did.

15 Q. And again I think you just said it but who
16 presented at this meeting?

17 A. Jim -- Jim McShane presented and before he began
18 the formal part of his presentation he asked me to leave
19 the room which I did.

20 MS. IBARRA: Objection misstates his testimony.

21 THE COURT: The court will remember the testimony
22 if it's contrary then the court will Mac a determination as
23 to who's telling the truth.

24 MS. IBARRA: Okay.

25 Q. BY MR. FORDYCE: So to be clear Mr. Stein did you
26 stick around for the meeting?

27 A. Yes, I did stick around for the meeting, it
28 started with us all together and then Mr. McShane asked me

1 to leave the room and had he testified exactly the same.

2 Q. Did Mr. McShane explain to you why he asked you to
3 leave -- leave the room?

4 A. Yeah he wanted to talk with his clients.

5 Q. So how would you describe your role in the
6 meeting?

7 A. My role in the meeting was as a very hopeful
8 person that this dispute could be resolved by somebody that
9 was very good at resolving disputes.

10 Q. And to be clear with your testimony we got rather
11 convoluted a few minutes ago --.

12 THE COURT: So you brought McShane to the tribe?

13 A. Yeah.

14 THE COURT: You introduced them? What did you say
15 tell McShane about what was going on before he came to the
16 meeting?

17 A. I told him that the tribal council was stealing
18 money and the -- that the assistant general counsel of the
19 tribe Elizabeth Aronson was writing the checks and that I
20 had to quit but I didn't want to quit because I'd be owed
21 millions of dollars I wasn't sure they were going to pay me
22 and we had this wonderful investor deal of a total of 21
23 million if we all kept our noses clean and here they were
24 stealing money, can you fix this situation about lawsuits
25 break out.

26 Q. BY MR. FORDYCE: And Mr. Stein this leads nicely
27 into our next exhibit on which Plaintiffs have relied but
28 can we take a -- we've been going over an hour, can we take

1 a bathroom break please, I'm sorry to ask but is that okay.

2 THE COURT: Sure.

3 MR. FORDYCE: Thank you.

4 THE COURT: We'll take about 10 minutes.

5 (Break taken.) 11:05 AM to 11:16 AM.

6 MR. FORDYCE: So back up and running.

7 Q. So Mr. Stein just to close out Exhibit 67 and

8 Exhibit 15 10 --

9 A. Well did --

10 Q. Sorry?

11 A. I just was wondering if we're going to go through
12 it.

13 Q. We just finished we've gone through '67 and 15 10
14 and we're going to move on to 60 but I just wanted to clear
15 up 67 and 15 10 is there anything in '67 or 15 10 that
16 leads you to believe that you were the tribes attorney?

17 A. No.

18 Q. Was that true at the time of these exhibits?

19 A. Yes.

20 Q. Is it true today?

21 A. Yes.

22 Q. Let's move forward to Exhibit 6 zero or backward
23 to Exhibit 6 and this is the penultimate exhibit in
24 Plaintiffs first binder and it looks to be dated September
25 13 --?

26 A. Niall, is --.

27 Q. Do you have it, let's make sure you have it, that
28 would be fairly important?

1 A. Is 15 10 admitted.

2 MR. FORDYCE: Your Honor 15 10 was identified on
3 7/12, can we admit it.

4 THE COURT: I think it was already in 15 but I'm
5 not sure.

6 THE CLERK: 15 10.

7 MS. IBARRA: Did you discuss it with Mr. McShane
8 yes.

9 THE COURT: I thought we did, yes it's admitted.

10 MR. FORDYCE: And can we check and see if '67 is
11 admitted.

12 THE CLERK: Yes and '67.

13 MR. FORDYCE: Thank you for reminding me.

14 Q. So Mr. Stein are you at Exhibit 60?

15 A. Yes.

16 Q. And this was also identified on July 12th, 2016.
17 And Your Honor do you have 60 in front of you.

18 THE COURT: I do.

19 MR. FORDYCE: Great thank you. Counsel, all
20 right.

21 Q. Mr. Stein have you seen Exhibit 60 before?

22 A. Yes.

23 Q. What is it?

24 A. It is a tribal council action that -- that is
25 written on behalf of the tribal council but was never
26 adopted by them there ask who drafted this document if you
27 know?

28 A. Well unlike all the other tribal counsel's because

1 we were trying to terminate the general counsel I drafted
2 it.

3 Q. Did SMDC have any attorney-client relationship
4 with Ms. Aronson?

5 A. No.

6 Q. Okay. Did you fire Ms. Aronson?

7 A. No she -- in the controversy that this is part of,
8 she resigned and then she revoked her resignation.

9 Q. Let me ask you more specifically Mr. Stein, to
10 your knowledge and from the documents you've looked at, did
11 you have the right or the ability under the contract
12 documents to fire Ms. Aronson?

13 A. No.

14 Q. Who would have had that authority if you know?

15 A. The tribal council.

16 Q. Did they do so?

17 A. They -- she resigned, they then talk inform her,
18 and then she came back and revoked her resignation and then
19 the tribal council terminated SMDC.

20 Q. Okay. I want to go through this in some detail, I
21 want to see if we can avoid reading everything into the
22 record but I do want to take you through this exhibit, or I
23 suppose you take us through this exhibit. After dear Ms.
24 Aronson, go ahead and read the first paragraph if you
25 would?

26 A. This is a document of course that would be -- on
27 the last page it indicates it's by the tribal council.

28 Q. Was it ever signed?

1 A. No it was never signed.

2 Q. So go back actually start from the re: Line if
3 you would?

4 A. Re: Termination for cause.

5 Q. And if you read the first paragraph please?

6 A. Dare Ms. Aronson by this letter you are terminated
7 for cause effective immediately, you have been working on
8 an interim basis as sifting --.

9 THE COURT: As assistant, assistants.

10 A. Yes. This letter ends that status and your
11 representation of the Gabrielino-Tongva Tribe as tribal
12 counsel as the Gabrielino-Tongva gaming authority, as for
13 the explanation of the cause of the termination, other
14 matters are addressed below.

15 Q. The next paragraph, the next short paragraph
16 references potentially sending a letter to the state bar of
17 California. Do you know if this was ever done?

18 A. The GT Tribe never sent a letter to the state bar
19 of California.

20 Q. Let's move on to the next sentence --.

21 THE COURT: Well it says you are advised a letter
22 has been written but not yet send to The State Bar of
23 California regarding certain matters below. So a letter
24 was written by whom, well again it hadn't been written and
25 this was never adopted so this was --.

26 THE COURT: Okay but it says, you are advised that
27 a letter has been written so that was -- that was
28 inaccurate or?

1 A. If the council were to adopt this, then the letter
2 would have been written, but the council, this was an early
3 draft, the council -- it was part of this ongoing
4 controversy between Ms. Aronson and myself and the council
5 decided to not do this, so as often happens you say okay by
6 the time -- this and this and this is going to happen, by
7 the time you actually sign it, you do that but when the
8 first draft is produced and you begin talking about it, you
9 don't necessarily do all the things that are stated in the
10 draft.

11 THE COURT: So it hadn't been written at the time
12 this draft letter was drafted?

13 A. That's correct.

14 THE COURT: But you were anticipating should it be
15 adopted that a letter would have been written?

16 A. Yes.

17 THE COURT: And ready to go?

18 A. Yes. Well if the tribal council wanted to and if
19 the tribal council said no get rid of that, we're not going
20 to write to the state bar of California then the next draft
21 would have been -- had that out.

22 Q. BY MR. FORDYCE: So moving forward, there's a bold
23 heading encaptioned legal work, actually just please go
24 ahead and read this into of the record?

25 A. The following reasons are a partial list of the
26 reasons for your termination, any two of which constitute
27 cause for your termination.

28 Q. Move on to incompetent legal work?

1 A. Incompetent legal work your work has been
2 characterized by a large Number of mistakes, you had failed
3 to do assignment which been given to you and the ones you
4 executed were completely improper in most cases.

5 Q. Completed improperly in most cases. Next?

6 A. In other cases they were completed properly only
7 after an enormous expenditure of time on my part that
8 negated the advance of paying you for the portion of the
9 work that you did do, here are a few examples.

10 Q. And let's just stop there for a second, where this
11 says -- where you reference negate the the advantages of
12 paying you, who was paying Ms. Aronson if you know?

13 A. She -- she the same deal with Rae Lamothe had.

14 Q. Is this refer --.

15 THE COURT: Which what?

16 A. To accrue -- she was accruing 10,000 per month,
17 however added onto that deal, because we had investor funds
18 already, she was being paid part of the 10,000 already on a
19 regular basis because that was very important to her.

20 THE COURT: So the -- by this time, you had
21 investor funds and -- so the only payment -- well it sounds
22 like she had the same deal, 10 K a month, so she wasn't
23 getting a regular salary because it would have been
24 deferred because that's how Aronson d that's how Ms.
25 Lamothe's pay was set up, her payments were deferred?

26 A. Right but.

27 THE COURT: But Aronson was getting?

28 A. Part of it.

1 THE COURT: Part of it by the investor -- through
2 the investor funds.

3 A. Yes.

4 THE COURT: Which had already come in at this
5 point or.

6 A. Yes. So she was deferring part and getting part.

7 THE COURT: Okay.

8 Q. BY MR. FORDYCE: So moving on to number one there
9 Mr. Stein, Dunlap V Morales settlement. Could you please
10 explain what your intent was with this first paragraph?

11 A. This first paragraph talked about something that
12 was just a chore that would need to be done for the
13 bankruptcy of Sam Dunlap and she didn't -- it was just a
14 simple form saying that the judgment had been paid by the
15 tribe and if you didn't put that in, they could come back
16 and get \$60,000 more of investor funds. So this was a
17 simple court form, sanction of judgment and she didn't do
18 that.

19 Q. When you wrote Paragraph 1, did you believe it was
20 true?

21 A. Yes.

22 Q. Do you still believe it's true?

23 A. Yes.

24 Q. When you say you fail to create or update the
25 Dunlap settlement notebook, to what are you referring?

26 A. Well after you -- after the form is written and
27 it's signed by the opposing party and it's filed in the
28 court, you would put a copy of it in the Dunlap settlement

1 notebook so that the investors when they came to audit or
2 review the expenditures could see okay that money actually
3 went to the purpose that was stated which was to the Dunlap
4 settlement, that was in the budget.

5 Q. Are you practicing law for the tribe under
6 Paragraph 1 here?

7 A. Absolutely not. I was trying to make sure the
8 records of the tribe were properly kept between Ms. Aronson
9 and Barbara Garcia, the tribal administrator. And Barbara
10 was constantly complaining that Aronson was not doing the
11 work that she agreed to do and Garcia was having to work
12 extra hours to do it.

13 Q. Let's move to not on to the next page, the second
14 paragraph, numbered paragraph, that is, tribal notebooks,
15 please explain what is happening?

16 A. Tribal notebooks. You failed to organize the 20
17 or so tribal notebooks into a coherent whole even though
18 this is one of the primary reasons for your being hired,
19 you failed to update existing notebooks or to create new
20 ones when needed. Instead you called it secretarial work,
21 but never sought to supervise notebook creation and updates
22 by Barbara -- Barbara Garcia.

23 Q. When you drafted this in 2006 did you believe it
24 was true?

25 A. Yes.

26 Q. Do you still believe it's true?

27 A. Yes.

28 Q. How does this show you practicing law for the

1 tribe?

2 A. It doesn't, it show we were trying to get the
3 records of the tribe in good and ordinary shape because now
4 that the investors had given husband money they were going
5 to come in and start looking at every nook and cranny
6 before they could approve this 2.5 million dollars advance
7 Five, six months later. One of the big tasks was to go
8 through five years worth of these notebooks on various
9 subjects including the tribal council resolutions and to
10 make sure that it all made sense, make sure all the
11 exhibits were attached for example and make sure that not
12 just one copy but that several copies were done and she not
13 only didn't do that but she didn't have Barbara Garcia do
14 that, she just left it undone and when I found it, it was
15 astonishing because this was months later and she had been
16 telling me for months she was doing it.

17 Q. Do you believe you need to be -- strike that.
18 Let's move to Number 3, this is paragraph numbered three,
19 tribal contracts. Please explain what's what's happening
20 in this contract?

21 A. Tribal contracts. You failed to organize or
22 update the tribal contracts notebook. You failed a make
23 new resolutions for new contracts, including capital
24 connection, quantum government relations, and Tobin and
25 associates.

26 Q. What's happening here?

27 A. One thing that the investors were going to look at
28 were what we call the tribal contracts notebooks notebook

1 is all the contracts that the tribe had enter into and was
2 paying under. Capital connection was a Sacramento
3 lobbyist, quantum government relations was another
4 Sacramento lobbyist and Tobin and associates was a black PR
5 agency that was working closely with us in Compton.

6 Q. At the time you wrote this, did you believe it was
7 true?

8 A. Yes.

9 Q. Do you still believe it's true?

10 A. Yes.

11 Q. These two and three, in your belief would one have
12 to be a lawyer to make she's complaints about Ms. Aronson's
13 work or is this something a non lawyer could perceive and
14 complain about.

15 Q. These were actually concerns raised by Sammy lie l
16 a i, of Libra to me and he said -- he's the guy they did
17 all the due diligence for, he said I'm going to need to
18 look this, I'm going to need to look at that, I'm going to
19 need to look at the other thing and that's what generated
20 my request to her to see Libra is going to need to do the
21 due diligence before we get any more money and as you can
22 see these are very big things to do, to sit down with all
23 the contracts and make sure they're all correctly there and
24 all the correctly signed and not just one copy but 3/3 or
25 four, that was a big job and I'd been assured all summer
26 long that she was to go this and this letter came after
27 many other things that occurred, I put this in there
28 because I also discovered that at the same time.

1 Q. Looking at paragraph Number 4, Lamothe
2 resignation, concerning settlement and termination for Ms.
3 Lamothe, please explain your complaint here?

4 A. It says you failed to complete the settlement and
5 termination agreement for former tribal general counsel Rae
6 Lamothe, your draft was completed only after two months and
7 was inappropriate to the deal, it also gratuitously award
8 Lamothe a month of 10,000 payments more than instructed to
9 the prejudice of the tribes investors and the tribe.

10 Q. Was this accurate at the time that you drafted
11 it?

12 A. Yes. She gave Lamothe 60,000 and the deal was for
13 50,000.

14 Q. Is it still true today?

15 A. Yes.

16 Q. Do you believe? How does this show or not show
17 you practicing law for the tribe?

18 A. It doesn't. I was noting that the exact
19 documentation that needed to be done on behalf of the tribe
20 was not done and identify instructed her as tribal general
21 counsel as part of my supervision get the contract done.
22 And it took her two months and then when she got it done,
23 by the time she got it done, the contract gave her -- gave
24 Rae Lamothe 10,000 more than was the original deal.

25 Q. And we have gone over this at some great detail
26 but was supervision of third party professionals part of
27 the SMDC agreement, was SMDC entitled to do so?

28 A. Yes that was specifically part of the job as an

1 zipped contractor was to supervise third party
2 professionals involved in the casino project.

3 Q. Is this what you were doing here?

4 A. Yes.

5 Q. Let's move to paragraph Number 5, Marilyn Barrett
6 mediation, please explain?

7 A. Marilyn Barrett mediation, you pushed for result
8 and scheduled a mediation with Ms. Barrett of Maguire woods
9 when the settlement amount would be less if we wait.

10 Q. What are you getting at here, what's your
11 complaint with Ms. Aronson?

12 A. Well it's stated in the next paragraph if I can
13 read the next two.

14 Q. That's fine please do?

15 A. You inform that as Mr. Stein had surmised when
16 Ms. Barrett initially demanded \$210,000 that Ms. Barrett
17 was leaving Mac woods. Mr. Stein has specifically
18 strategized that. Should this prove to be the case the
19 settlement amount would drop by as much as 75,000 if we
20 delayed and allowed the claim to get stale. This is
21 exactly what has occurred as Ms. Barrett is now with Jeffer
22 Mangels but the [SKPHRER] [PHAPL] row and she has obviously
23 settled her finances with Mac woods. Nonetheless you
24 sought an early mediation date, you failed to inform Mr.
25 Stein of Ms. Barrett's switch to another firm and he only
26 found out by accident after a week you were informed.

27 Q. Was this true when you wrote it?

28 A. Yes.

1 Q. Is this true now?

2 A. Yes.

3 Q. How does this show your practicing law for the GT
4 Tribe if it does?

5 A. I was not practicing law for GT Tribe. What we
6 were trying to do is get Ms. Barrett down to the 130,000
7 budgeted in the Libra budget. She was budget-d for
8 210,000 -- she was budgeted for 130,000, she was demanding
9 210 and we hoped to come in at 135 which is very close to
10 the budget the amount.

11 Q. So was this in SMDC's interest as well as the
12 tribes?

13 A. Oat absolutely, yeah because we could -- if we
14 didn't stick to the first budget, which they did not, they
15 would never get the 2.5 million dollars advance scheduled
16 for January --December or January and that -- and as it
17 turned out they never did get that.

18 Q. Numbered Paragraph 6, Hollywood park litigation,
19 unauthorized settlement discussions, somewhat self ex
20 [PHRAP] [TP-R] Eiffe but please explain what's happening in
21 numbered Paragraph 6?

22 A. Hollywood park litigation, un for thighs-d
23 settlement discussions with State of California, the [HAO*]
24 Hollywood Park litigation cannot be settled without
25 allowing to stand exclusivity clauses that may put a large
26 financial penalty on the State of California for the
27 entering into a compact with the Gabrielino tribe, no
28 settlement is possible absent a vote in November new bonds

1 that would authorize the same transportation projects as
2 are authorized by bonds being contested in the litigation,
3 nonetheless you embarked upon settlement discussions with
4 the State of California in the manner that highly
5 embarrassed the tribe in front of other litigants who are
6 currently doing the majority of the work to protect the
7 tribes interest at no extension of the tribe or its
8 investors.

9 Q. Was it true when you wrote it?

10 A. Yes.

11 Q. Is it true today?

12 A. Yes.

13 THE COURT: I have a question.

14 MR. FORDYCE: Yes sorry.

15 THE COURT: Why didn't you just get a lawyer for
16 the tribe or suggest a lawyer for the tribe draft the
17 letter rather than yourself kind of getting in there and
18 drafting a letter? I mean that's kind of what the practice
19 is okay some legal issue comes up, I'm going to recommend a
20 lawyer, that's kind of the -- what's been the pattern and
21 practice. So why in this circumstance did you not higher a
22 lawyer or recommend a lawyer to them so that you wouldn't
23 have to draft this letter -- this letter for them and give
24 an appearance?

25 A. If you look at the date September 13th date of the
26 tribal council resolution September 19th that Jim McShane
27 wrote, they're six days apart.

28 THE COURT: Uh-huh.

1 A. Because Elizabeth Aronson was writing checks that
2 were stealing money from the tribe, we didn't have the six
3 days to wait. I was trying to do exactly what the court
4 suggested, that would be the right thing to do, however out
5 of anger and fear that I was going to have to be held
6 responsible to investors for obvious theft of money by
7 individuals that held tribal council positions, I was
8 scared and I was doing things that the court is quite right
9 about, I should have said let me wait another week, get Mr.
10 McShane hired then we will turn around and try to get rid
11 of Ms. Aronson, the problem was Ms. Aronson eventually
12 dumped four \$28,000 out of the act as an [SKP-PL] of why it
13 was important to get rid of her now and that four 28,000
14 that was gone forever.

15 MR. FORDYCE: Mr. Stein were you -- I'm sorry Your
16 Honor.

17 THE COURT: You never thought about asking Mr.
18 McShane to do this instead of you doing it?

19 A. Mr. McShane was not yet hired yet and I should
20 have delayed doing this but I feared that we would be
21 losing more money in the meanwhile.

22 MR. FORDYCE: Mr. Stein.

23 THE COURT: Was he hired as of the 19th, September
24 19th when he showed up?

25 A. He was hired, I don't know when the agreement was
26 signed, he shook hands with Sam Dunlap that night.

27 THE COURT: With [KWRAL] you know was there a
28 resolution hiring him or some other formal -- in other

1 words if he wasn't, I mean he was doing things without
2 being hired on September 19th why couldn't he have also
3 **[do not|done]** this termination letter?

4 A. He did do other letters, I should have waited with
5 the termination letter until September 19th, it was my
6 mistake I should have waited another six days.

7 THE COURT: Okay?

8 A. The reason for the mistake was because she was
9 writing checks off the investor funds that were in an
10 account in the tribes name that were clearly stealing money
11 from the tribe.

12 THE COURT: Okay I'm just wondering why if
13 McShane, well because you were saying well he hadn't been
14 hired, as of the 19th he hadn't been hired and he was still
15 doing thing for the tribe?

16 A. Exam.

17 THE COURT: But I understand your answer, okay?

18 A. And I understand the Court's point, if I asked him
19 I think he would have written a letter like this.

20 THE COURT: Okay.

21 Q. BY MR. FORDYCE: Mr. Stein did anyone else ask you
22 to draft this letter?

23 A. No.

24 Q. So there were problems with the Hollywood park
25 litigation, is there --?

26 A. Number 7?

27 Q. Number 6, well when I -- I was going to ask you,
28 the tail end of Number 6 you say in a manner that highly

1 embarrassed the tribe in front of other litigants. Did
2 this also reflect on SMDC in any way?

3 A. No.

4 Q. Let's move to Number 7 on the next page?

5 A. Hollywood park litigation no docket made, after
6 over three months you have had failed to make any docket to
7 the Hollywood Park proceedings, as a result papers are
8 disorganized and there is no way to track events in the
9 litigation in preparation for upcoming MSJ motions.

10 Q. Was this true when you wrote it?

11 A. Yes.

12 Q. Do you believe it's true now?

13 A. Yes.

14 Q. Does this show had you practicing law for the
15 tribe?

16 A. No, no.

17 Q. Why not?

18 A. The Hollywood park litigation was being handled by
19 Ms. Aronson, she was the lawyer on it. I was trying to say
20 hey where are the records of what you're doing if there's
21 an MSJ, aren't you going to need these papers.

22 THE COURT: So who's into the Hollywood litigation
23 who sued who?

24 A. The tribe sued Hollywood Park and the State of
25 California over bond issuances and the idea was to stop the
26 issuances of the bonds because once she were issued, it
27 would prohibit a casino in Los Angeles County where the
28 tribe wanted to have a casino. So this was fundamental to

1 getting a casino was to stop those bonds from being issued.
2 In fact she never were issued, this was a successful,
3 straight I can move, the way I stop bonds from being issued
4 is you attack the authorization by the legislature and say
5 aha you guys did something wrong and that alone for the
6 length until that's determined will prevent the State of
7 California treasurer from actually saying okay we've the
8 legal authority to issue bonds we're selling them to wall
9 straight.

10 THE COURT: And my only question would be and I
11 don't know, maybe you're not the person to ask but why
12 would you want to initiate that litigation but you're still
13 seeking state recognition for the tribe why would they look
14 favorably on the tribe if the tribe is suing them on this
15 bond issue, in other words why would they want to go
16 forward and say okay these people have sued us over this
17 and we're going to go ahead and recognize them now and give
18 them casino et cetera et cetera, I don't know some of the
19 strategy seem at odds.

20 A. Because there were.

21 THE COURT: I mean do you know why that --?

22 A. Yeah because there were tons of people including
23 most of the major unions that hold a lot of sway up in
24 Sacramento that opposed this.

25 THE COURT: Opposed what?

26 A. Opposed to the bond deal, the bond deal was a very
27 clever maneuver by the casino tribes in California to lock
28 out the Gabrielinos from getting a casino. We were union

1 friendly we said we're going to have union guys, we're
2 going to have former prisoners, we're going to be bay black
3 city that has the highest unemployment rate and murder rate
4 in Los Angeles County we're doing all that stuff. The
5 federally recognized tribes on the other hand were [THUPLG]
6 their knows at the unions and the unions absolutely late-d
7 them, absolutely hated them, so we aligned ourselves with
8 the unions and when we do this Hollywood Park litigation
9 the unions were all thumbs up, like good for you and
10 Elizabeth Aronson was the attorney of record for the
11 litigation and for the tribe but when I went into our
12 office there were court papers strewn all over the floor,
13 these litigations.

14 THE COURT: But I I mean it still seems like the
15 state would not be inclined to be cooperative with the
16 state recognition thoracic eve that had developed, in other
17 words we're not going to go the federally recognized route
18 we want to do the state recognized route, get a state
19 recognized casino but if you're suing the state it seems to
20 me that would put a halt on the state recognition that you
21 were trying to pursue?

22 A. Well if these bonds were issued, that would put a
23 halt on the state recognition.

24 THE COURT: So either way there was going to be a
25 problem?

26 A. And we were just hoping that we would be able
27 to -- did you ever hear the phrase do it and say our sorry,
28 and State of California they must have 10,000 lawsuits

1 pending at one time so I don't think they're emotional
2 about whether one much them is yours.

3 MR. FORDYCE: I think isn't the phrase it's easier
4 to ask forgiveness than permission, I think that might be
5 it.

6 Q. Mr. Stein the services that you're talking about
7 in the analysis of the bond issue, was this part of -- was
8 it your belief that this was part of your services as SMDC
9 and the development of the casino?

10 A. Yes it was mainly lobbying type services because
11 once again if these -- if the exclusivity clauses that went
12 with the bonds, if the bonds were issued, they would be
13 issued with the exclusivity clauses, if that happened that
14 would be the end of the casino project, a major wing of it.

15 Q. Looking at Number 8, tribal council meetings,
16 resolutions, notices of minutes, can you briefly tell us
17 what's happening there and your issues with Ms. Aronson?

18 A. Tribal council meetings, resolutions, notices and
19 minutes, you failed to take responsibility for setting the
20 August did September tribal council meetings. I had to
21 prompt you to do so and then most of the calls were made by
22 Barbara Garcia. You failed to get notice completed in a
23 timely manner, you failed [TPRO] prepared papers for tribal
24 council meetings, including resolution 101 on the quantum
25 contract, instead many of these tasks required excessive
26 involvement of myself and Barbara to complete.

27 Q. Is Barbara Garcia a lawyer to your knowledge?

28 A. No.

1 Q. Was this true when you wrote it?

2 A. Yes.

3 Q. Is it still true today?

4 A. Yes.

5 Q. Is it practicing law for the tribe?

6 A. No.

7 Q. Why not?

8 A. It was telling her to get her job done and her job
9 was to write these respiratory and write them in time to be
10 passed by a meeting and if they weren't passed at that
11 meeting then I had to tell her again to write them in time
12 for the next meeting. What happened is two meetings had
13 gone by and she still had not done resolution -- what
14 was -- what was going to be resolution 101 on the quantum
15 contract and he was -- and that guy was one of our
16 lobbyists and he was calling in saying where's my money,
17 where's my money, and I was saying please lobby for us, and
18 I said yeah, I'll tell them all about how you stiffed me
19 for money. It's like no, no, it's just because we don't
20 have the resolution signed by the council. Why not? Well,
21 because the tribal general counsel hasn't written it yet.
22 Well ask her to write it. Yes, I asked her 10 times. That
23 was the type of problems we had with Elizabeth Aronson.

24 Q. Number 9 authorized use of a tape recorder,
25 what's happening?

26 A. Authorize use of a tape recorder, at the September
27 tribal council meeting you allowed use of a tape recorder
28 putting in danger the confidentiality of our proceedings.

1 Whether or not tribal council indicated their approval, as
2 the lawyer in the group, you ex coo size-d extremely poor
3 legal judgment to allow it to go forward without protest
4 given the sensitive nature it you're casino project and
5 tribal council meetings.

6 Q. Was this true when you wrote it?

7 A. Oh absolutely.

8 Q. Was it -- was it. Is it true there?

9 A. Yes. What happened there?

10 Q. Yeah what is going on actually.

11 THE COURT: Why did they want to tape record, had
12 they not been tape recording before.

13 A. No.

14 THE COURT: So why did they want to start tape
15 record egg -- first of all who wanted to start tape record
16 egg, the tribal council or Aronson?

17 A. The tribal council wanted to start tape recording.

18 THE COURT: Okay?

19 A. And I absolute life refused to participate in tape
20 recorded sessions.

21 THE COURT: Because?

22 A. Well tape recordings as Richard Nixon will tell
23 you tape recordings are not that good an judged when you're
24 dealing with the government, if you say on a tap recorder
25 by the way Senator so and so wants a bribe but we're not
26 going to give it to you you just take the tape recorder and
27 have Jonathan Stein saying Senator so and so wants a bribe.
28 Now let me ask you, if you're Jonathan Stein, do you have

1 really want that there because they'll then interpret
2 something you did with Senator so and so as a bribe or
3 alternatively, can you imagine if it gets in the newspapers
4 what Senator so and so will think of Jonathan Stein. You
5 just cannot tape record --

6 THE COURT: Only if it becomes public I suppose
7 but -- but anyway, okay.

8 A. Yes.

9 THE COURT: You were the one who objected to the
10 tape recording?

11 A. And Your Honor with all due respect, I haven't
12 worked for 100 casino companies, but I would not be
13 surprised if 100 out of 100 casino companies did not use
14 tape recorders for anything.

15 THE COURT: You mean their tribes and council
16 meetings?

17 A. Tribes, council meetings, casino companies,
18 casinos in Makow, casinos in South Africa, wherever you are
19 I don't think you'll find many heavily regulated companies
20 tape recordings things.

21 Q. BY MR. FORDYCE: Does this show you practicing law
22 in your believe Stein.

23 THE COURT: Sorry.

24 MR. FORDYCE: Oh I'm sorry Your Honor of course.

25 THE COURT: Can I ask a [TRAOEF] you have said
26 [AOETD] tribe wanted [T-D] tape recorded, you didn't want
27 them but what was the reasoning provided to you but the
28 tribe or to Aronson as to why they wanted it tape recorded.

1 MR. FORDYCE: I was going to say calls for
2 speculation Your Honor I'm getting.

3 THE COURT: I'm sorry.

4 MR. FORDYCE: I said calls for speculation, sore?

5 A. It's always good to accuse a court of speculation.

6 MR. FORDYCE: She rephrased beautifully?

7 A. By the this time starting in August there was
8 terrible friction, as I said the tribal council already
9 hated me from when the Morales judgment was entered but
10 they had a contract and they wanted the money from the
11 contract.

12 THE COURT: Okay.

13 A. As it turned out I performed the contract, hooray,
14 John's a hero but we still hate his guts. By August and
15 September with the addition of Aronson things had gotten
16 worse with the point where I said listen you guys, you may
17 hate me but I can at least convince the investors to make
18 another discretionary advance, she can't -- I can't work
19 with this lady for all these reasons and for all the
20 reasons that -- that -- the same reasons she wouldn't work
21 with me, she hated my guts worse than the tribe because I
22 did things like tell her to organize court papers and add
23 notebooks and do all the things she decided she didn't want
24 to do that's just --.

25 THE COURT: So what was the tribes reasoning to
26 you then for wanting the tape recorded-g?

27 A. I don't recall, I don't recall but.

28 THE COURT: The answer is I don't know, okay?

1 A. But I can tell you.

2 THE COURT: That there was friction?

3 A. We had an incredible amount of friction, such that
4 I even wrote this letter when I should have waited for gym
5 nook come on born to write the letter.

6 Q. BY MR. FORDYCE: So moving on to Number 10 Mr.
7 Stein removal of notebooks from tribal administration [-FS]
8 [-Z] what is your complaints with Ms. Aronson here?

9 A. Okay this was the -- this occurred four days
10 earlier, September 9th, the tribal council took the tribal
11 council notebooks, removed them from the tribal
12 administrative offices to put to another office, in fact
13 they didn't move tribal council offices, they just took
14 them hostage, they just took all the tribal records hostage
15 saying we got them now. And Ms. Aronson was -- I had left
16 the room, I had left for the night.

17 THE COURT: What records did you say they took
18 hostage, the notebooks?

19 A. The notebooks, all the notebooks that contained
20 all the tribal records.

21 THE COURT: I guess my question would be don't
22 they belong to them though?

23 A. Yes, they do.

24 THE COURT: Okay so when you say hostage what were
25 you -- what were you getting at?

26 A. Okay let me explain.

27 THE COURT: When you --

28 A. You've got a tribal council.

1 THE COURT: Yes?

2 A. But you've got the tribal members. My duties if I
3 had any were just set forth in the SMDC agreement but their
4 theory is that I owe duties to somebody, I didn't. But the
5 only people I would have owed duties to are so the members,
6 I can't participate in theft of tribal funds; I can't
7 participate in theft of tribal funds if I have any such
8 duties, I don't but I sure know enough to not get --
9 participate in stealing money. And I can't participate in
10 stealing the tribes records when in fact I know that these
11 guys want to take the money and take the records and take
12 off and leave the members stranded. And in fact --.

13 THE COURT: So you're saying that the tribal
14 council didn't have a right to the notebooks, the notebooks
15 belongs to the individuals?

16 A. No it belonged to the organization. They were
17 running the organization.

18 THE COURT: Right?

19 A. But the organization is the members, is the 1400
20 native Americans that were members of the organization, and
21 the organizations tribal administrative offices were in one
22 place and these guys simply took the notebooks and took
23 them to Virginia Carmelo's house.

24 MS. IBARRA: Objection lacks foundation.

25 THE COURT: Okay well I don't know. How do you
26 know they went into Virginia Carmelo's house?

27 A. Because Virginia Carmelo told me I have the
28 notebooks in an admission against interest.

1 Q. BY MR. FORDYCE: So Mr. Stein.

2 THE COURT: So it's your opinion that the tribal
3 council was not entitled to the notebook, all 1400 were
4 entitled to them, so into one person was entitled to them
5 but all of them?

6 A. That's right. And part of the wave you run an
7 organization in my understanding, once again it wasn't my
8 organization, I was SMDC buff the way you run an
9 organization is you have things kept in an orderly manner
10 and you will notice that all of these points have to do
11 with keeping things in an orderly manner.

12 THE COURT: I understand it's just that formal Lee
13 1400 people aren't going to be in possession of something
14 so they authorize people, their authorized representatives
15 such as a tribal council to act on their behalf so I
16 just -- anyway, okay?

17 A. And the court is correct, the court is correct and
18 that is a very good point.

19 Q. BY MR. FORDYCE: Mr. Stein was your belief when
20 you wrote this that there was potential harm to SMDC for
21 having the tribal council take the notebooks that are
22 referenced in Number 10?

23 A. Yes. I thought that what would happen is that the
24 investors would eventually sue over the stolen money, that
25 tribal members would sue over the casino project falling
26 apart, and that the only person with substantial assets
27 would be me, not on SMDC but me personally so not only
28 would SMDC lose the \$2,000,000 it was owed, that would only

1 be paid from investor funds in the future, but that I would
2 personally face liability from investors suing and from
3 individual tribal members suing.

4 Q. Okay. Does this in your belief does this show you
5 practicing law for the tribe?

6 A. No.

7 Q. Why not?

8 A. I am calling to task the tribal general counsel
9 Elizabeth Aronson, she was practicing law and I was setting
10 forth what she did and didn't do. Removal of notebooks, I
11 was not giving any advice to the tribal council she had
12 walked off with the notebooks.

13 Q. All right. Moving on to 11 and see if we can just
14 get through the next couple and then we'll be coming up to
15 none, Number 11 is failure to inform tribal council of your
16 relationship with Pechanga casino general manager. Please
17 explain your issue here?

18 A. Okay. The removal of the notebooks from the
19 tribal council offices to your possession is especially of
20 your concern because you failed to inform the tribal
21 council of your personal friendship with the general
22 manager of Pechanga casino, an arch political, enemy of the
23 tribe's efforts to gain a casino, nor did you inform them
24 the three times you solicited me to take a meeting with
25 him.

26 Q. Did this have a potential in your opinion at the
27 time or your belief, did this action on the part of Ms.
28 Aronson have a potential negative effect on SMDC?

1 A. Oh my God yes.

2 Q. Please explain?

3 A. There was every possibility that the general
4 manager of the Pechanga casino wanted to bribe SMDC or Ms.
5 Aronson or both to discuss the casino project that would
6 have cut their profits by 50 percent.

7 Q. Was this accurate -- was this true when you wrote
8 it?

9 A. Yes because Ms. Aronson had approached me three
10 times saying hey the general manager of Pechanga casino
11 wants to meet with you and I said why would I want to meet
12 the very people that are trying the hardest to ruin our
13 casino project. Well you know he believes in friendly
14 relations this and that, and I said what do you mean by
15 friendly relations? And she didn't say anything but she
16 did one of these (Indicating.).

17 Q. And for the record that's Mr. Stein making the
18 kind of universal hand gesture rubbing fingers together for
19 money. And Mr. Stein.

20 MS. IBARRA: I'm going to object that it might be
21 hearsay because --.

22 MR. FORDYCE: She's a party, she's the tribes
23 attorney a party admission.

24 THE COURT: Okay I'll overrule it.

25 Q. BY MR. FORDYCE: And Mr. Stein as you sit here
26 today do you still believe that Paragraph 11 is true?

27 A. Paragraph 11 is considerably more restrained than
28 I am in answering questions so the restrained version I

1 believe is true.

2 Q. And Number 12, approval of actions by councilman
3 Dunlap that breach revenue participation agreement
4 covenants?

5 A. Okay. Number 12, you approved two reimbursements
6 to Councilman Dunlap which I later disapproved to prevent
7 it. The first was a 20,000 interest payment to Mr. Dunlap
8 that was not in the investor budget for the first 2.1
9 million, the second was a \$1300 check for children's comic
10 books. These two reimbursements are clear violations of
11 the covenant of using investor proceeds for purposes other
12 than gaining legal entitlement to a casino. Whether or not
13 tribal council indicated any approval of these actions as a
14 lawyer in the group you exercised extremely poor legal
15 judgment to allow them document forward your actions
16 compromised the integrity of the tribal council and the
17 investor group.

18 Q. I think this is fairly explanatory, what was the
19 \$20,000 interest payment to Mr. Dunlap, please explain
20 that?

21 A. All the tribal council people were accruing not
22 only 3,000 a month, but they were also accruing interest on
23 the amount of time that it took until they got their 3,000
24 a month. So what this was was kind of a clever scheme to
25 put 20,000 bucks in Sam Dunlap's pocket and he said well
26 since we've got these interests that I'm owed, why don't
27 you just make an interest payment like interest to a bank
28 and this all happened would you tell me, I discovered it

1 later and I stopped it, and Mr. Dunlap then went to the
2 other tribal council men I got a rash of very negative
3 reactions not just from him but surprisingly from others
4 and apparently they wanted to have their turn in interest
5 payments next.

6 Q. What about SMDC, any interest payments to SMDC?

7 A. Oh God no, no.

8 Q. What's the -- to the extent you know, what was the
9 \$1300 check for children's comic books were they fees for
10 Mr. Dunlap or were they for children?

11 A. Honest to goodness they really were -- they will
12 really put out -- he had really purchased Gabrielino Indian
13 comic books, he had a box of them, now I believe that they
14 were several years Old but they basically showed the
15 history of the tribe to first graders, maybe that -- well,
16 so he had said that he had paid \$1300 for those Coppock
17 books even though they were Old and dog-eared and that he
18 was owed 1300 for that as a reimbursement and berth Aaron
19 had written both those checks to him and I -- I found out
20 about it and I -- I grabbed the checks and stopped it.

21 Q. Mr. Stein how do you reconcile the issue you're
22 raising in Number 12 with the payments that were made as a
23 result of the bankruptcy judgment out of the investor
24 funds?

25 A. The -- as I said before the investors approved the
26 payment of the Dunlap settlement because the tribal council
27 men said hey if you don't pay this debt that we owe you're
28 not going to have a deal.

1 THE COURT: So was that the bankruptcy judgment or
2 was that another judgment.

3 A. Oh no no no did I get this long.

4 MS. IBARRA: It was the Morales.

5 THE COURT: Yeah it was the Morales litigation
6 right.

7 A. Did I miss something.

8 MR. FORDYCE: I said bankruptcy I think that I was
9 part of the Morales.

10 MS. IBARRA: Yeah they're related.

11 A. My apologize can I hear the question again.

12 MS. IBARRA: Yes.

13 Q. BY MR. FORDYCE: How do you reconcile the issues
14 that you raised in paragraph 12 with the judgment as a
15 result of the Morales litigation that was paid on behalf of
16 tribal members?

17 A. The judgment was an exception to the rule that was
18 approved by the investor and that was necessary to get the
19 tribal council to approve the investor deal and they were
20 okay with that. These later payments were not part of the
21 investor budget and I didn't think the investors would be
22 at all okay with it and once these payments were made, we
23 would never get the 2.5 million dollars advance, and it was
24 your understanding that Ms. Aronson she directly authorize
25 the the these payments?

26 A. She wrote the -- she actually wrote and signed the
27 checks.

28 Q. Was this Paragraph 12 true when you wrote it?

1 A. Yes.

2 Q. Do you believe it's true now?

3 A. Yes.

4 Q. How does it show SMDC or you practicing law for
5 the tribe?

6 A. It doesn't. I was trying to save guard money, not
7 practice law and I was trying to stop payments that were
8 outside of the investor budget and the third thing is I --
9 it doesn't take a lawyer to recognize that if you steal
10 money from the tribe for individual -- individuals that
11 that is -- that is a very bad thing.

12 MR. FORDYCE: Your Honor it's 12 '04 it's a page
13 turn to ethical violation on the next page.

14 THE COURT: Yeah it's 12 so why don't we -- we can
15 continue this tomorrow I guess.

16 MR. FORDYCE: Thank you Your Honor we will do so.

17 THE COURT: And Neli I have Plaintiffs opposition
18 to Defendants motion but I'm going to need defense motion
19 so I can get it.

20 THE CLERK: Is in the binder.

21 MR. FORDYCE: The black binder, yes.

22 THE CLERK: Yes.

23 THE COURT: I have them both then, thank you all
24 I'll see you all at the same time. 12:04 PM.

25

26

27

28