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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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GABRIELINO-TONGVA TRIBE VS. STEIN

ROUGH TRIAL TESTIMONY OF J. STEIN, 2/7/17

10:16 AM.

THE COURT: Gabrielino versus Stein BC361307 good morning counsel.

MS. IBARRA: Good morning.

THE COURT: Make your appearances.

MS. IBARRA: Delia Ibarra on behalf of plaintiff Gabrielino-Tongva Tribe.

MR. FORDYCE: Good morning Your Honor Niall Fordyce on behalf of Mr. Stein and law offices of Jonathan Stein.

MR. STEIN: Jonathan Stein on behalf of SMDC and the Crane Group and Mr. Fordyce may I bother you for my glasses.

THE COURT: Okay. We have Mr. Stein on the witness stand, we're still going over the Libra agreement I guess, right.

MR. FORDYCE: Yes Your Honor.

THE COURT: Okay which exhibit is it.

MR. FORDYCE: 644 in Defendants second volume.

THE COURT: Thank you. Yep, thank you I'm there, you may continue Mr. Stein, you understand you're still under oath?

A. Yes Your Honor.

Q. BY MR. FORDYCE: So Mr. Stein just picking ddd;e.-g backup it where we were yesterday, I'd like you to turn to Section 3.2, titled accuracy of books and records,

1 I'll just give everyone a minute and I think it's Bates '08
2 '71. Are you there?

3 A. Yes.

4 Q. Okay. So Mr. Stein with you look at -- and start
5 with 3.2?

6 A. Yeah the purpose --.

7 Q. And what is the purpose of 3.2?

8 A. The purpose of 3.2, accuracy of books and records
9 is -- was to require the tribe to keep books and records
10 that could be reviewed by the -- by the investors and that
11 occurred under 3.3 annual audit. It was over this
12 provision that I had my second biggest problem with
13 Elizabeth Aronson in that she failed to keep the accurate
14 books and records that we would need under 3.2 and I had my
15 eye on the annual audit on 3.3 because that was -- that was
16 one of the things that we would have to do to ensure
17 getting new funds.

18 Q. Did any of the investors ever raise issues to you
19 concerning any of these provisions 3.2 or 3.3?

20 A. We never got far enough. You would first have to
21 put in your condition certificate -- what's the name of
22 that, certificate of --.

23 THE COURT: Compliance maybe.

24 MR. FORDYCE: It was Exhibit C I believe it was?

25 A. Yeah Exhibit C.

26 MR. FORDYCE: On '92 two. Condition satisfaction
27 certificate?

28 A. Condition satisfaction certificate, yeah. So

1 first we'd have to do that and then they would do their due
2 diligence in connection with that either at part of an
3 annual audit or before the annual audit, so we never got
4 the point of communicate [W-G] them about what our books
5 and records were like.

6 Q. But you personally had [K*ERPZ] about failure to
7 follow 3.2 and 3.3 stark?

8 A. Yeah Ms. Aronson didn't keep things properly and
9 of course we had the Patriot Act concerns with Mr. Dunlap
10 would have to be disclosed as well.

11 Q. 3.4, I assume that's related to periodic reports?

12 A. Right the periodic reports would be in connection
13 with the certificate and in between certificates not less
14 than quarterly was the requirement of 3.4 so every three
15 months or more frequently I would be reporting to the
16 investors and I did the -- I did one report which showed
17 some of the problems occurring but I tried to spin it in a
18 manner that would help the tribe.

19 Q. And were you -- when you were reporting as you
20 just mentioned, was that on behalf of the tribe or SMDC?

21 A. The report would be done by the tribe but I was --
22 since SMDC was getting the money and the relationship with
23 the investors, I had informally begun reporting to them.

24 Q. Okay. Do you consider your belief that that
25 constituted practicing law for the tribe?

26 A. No no that was because SMDC was going to get paid
27 by these people and was an independent contractor for the
28 tribe responsible to get investment monies to fund the

1 casino project.

2 Q. Okay. Let's move on to article four, I want to
3 just isolate a couple of provisions here. Article 4.1,
4 representations and warranties and I draw your attention to
5 4.1 B , please explain?

6 A. These were warranties that we made to the
7 investors at 4.1 B was that the tribal council ran the
8 tribe and that the decisions of the tribal council were
9 made in accordance with the tribes constitution, we had
10 just passed a constitution as part of the transaction with
11 the verses.

12 Q. Why was this important?

13 A. Because they had to know -- just like SMDC for its
14 development agreement had to know it was a valid and
15 binding agreement so these people also had to know the
16 shame.

17 Q. [WAUPTZ] the tribal constitution as referenced in
18 here was this a specific concern to your knowledge of the
19 Libra investors?

20 A. Yeah and we met that concern when Rae Lamothe
21 wrote a constitution and it was passed, I made comments on
22 that.

23 Q. And that constitution I believe we've had
24 testimony, was it ever amended?

25 A. No, no. It was -- it was ratified later by the
26 election in the spring but that was the Candalaria group
27 that ratified and had -- because we were all under the
28 impression that the Candalaria group was the GT Tribe since

1 it had seven-eighths of the members of the tribe.

2 MS. IBARRA: Objection lacks foundation, well
3 actually as to speculation as to we all thought.

4 MR. FORDYCE: I believe there's been testimony.

5 THE COURT: Well I I'm assuming that means him and
6 he can't speculation as to what anybody else thought but
7 certainly he can tell us what he thought and thought
8 cancers was the group.

9 Q. BY MR. FORDYCE: Moving on to 4.1 E, please
10 explain this provision?

11 A. This provision was claimant to represent the
12 aboriginal tribe, there was a San Gabriel group, led by ant
13 Morales, we've called it the Morales group, Number 2 the
14 Beaumont group led by the Blount sister's and they were
15 realty to Shirley Machado as a matter of fact her coming on
16 to the council was a big deal because it basically knocked
17 out the Beaumont group claim that they were somehow better
18 able to represent the tribe than the Saint Monica group.
19 Then the West L.A. group led by Robert Duarme, that was
20 another group of claimanat that were congregated around
21 university high schools, a Gabrielino springs project had
22 been the key accomplishment of that group and then that
23 Coastal Gabrielino Degueno group led by Jim Velasquez those
24 were the people that said yes we're going to be part of the
25 GT Tribe but then they resigned en mass other than Sam
26 Dunlap and so they went back to being the coastal
27 Gabrielino and Degueno group.

28 Q. Do you know why this was important to the Libra

1 investors?

2 A. Just for disclosure that they were barking what we
3 hoped to be the guys most able to get a casino but these
4 people could come forward and say no no no we want the
5 casino and we don't want you guys to get it.

6 Q. But the goal was still to share the proceeds of
7 the casino with all the members of the aboriginal tribe, is
8 that correct?

9 A. That was my goal as somebody concerned with a
10 successful casino project but each 16 these groups and the
11 tribal council of the Santa Monica group that we were
12 didn't want to share and I could not [SREUPS] joinder Saint
13 Monica group to share but I wasn't sure how much they were
14 actually going to do it, they said they were going to do it
15 but they indicated in private conversations with me
16 involved that they didn't want to share at all with these
17 other Five groups -- other four groups.

18 Q. Moving on to F, all members of the council h
19 please explain [TH-FRPBLGTS] all members of the council are
20 recognized by the tribe and the idea was that they were
21 real tribal members and so there was no way to really mesh
22 [THAUR] other than paperwork and they were making the
23 reputation that they thought the paperwork was good enough.

24 Q. What was the purpose, is this sort of a -- trying
25 to avoid interlopers as it were?

26 A. This is to give further comfort to the investor
27 that's they had chosen the right group to deal with as
28 opposed to Beaumont group or San Gabriel group that far

1 they could have chosen instead.

2 Q. Okay. Moving on to G, the next line?

3 A. This is very much -- this is Morrison & Foerster's
4 version of the same thing in the SMDC agreement, tribal
5 council resolutions authorized in this agreement have been
6 duly approved, certified, and recorded in the minutes of
7 the tribe as proper and authorized actions of the tribe.
8 All in accordance with the resolutions and that's where
9 they left it.

10 Q. Okay. And why was this important to your
11 knowledge?

12 A. It was again giving comfort to the investors in
13 much the same fashion as a similar clause gave comfort to
14 SMDC.

15 Q. I believe we looked at provision J briefly
16 yesterday. That's the provision that specifically
17 mentioned the Patriot Act?

18 A. Right.

19 Q. Is that correct?

20 A. And what that provision would say is for example
21 if we need Sam Dunlap had Don gone to Syria we would make
22 application in Washington, D.C. under the Patriot Act
23 saying does he have permission to spend more than \$10,000
24 with this refugee group even those it's sponsored by
25 Hezbollah it's not Hezbollah terrorism it's Hezbollah
26 charity.

27 Q. So to be clear it's not that Mr. Dunlap was
28 absolutely not allowed to go to Syria [THR*FR] there were

1 just I [H-Z] dotted and T's crossed is that correct?

2 A. Technically that's correct but more fundamental
3 [TAOE] remember we're at 2017 11 years later but 2006 the
4 Patriot Act was still very, very new it passed in I
5 think 2003, so about three years old and all the investment
6 community that I was familiar with, not just from this deal
7 but from other Indian casino deals that I worked on were
8 absolutely -- they would not touch anything that had a
9 Patriot Act filing required because that would put them on
10 record in public as [SHOUF] associated with something that
11 might be a Patriot Act concern. So you can lose your --
12 you would just lose the ability to attract investors to
13 your fund if you had any public filing they would just say
14 well you're offering 20 percent there's another fund
15 offering 19.9 percent and a third one offering 20 point one
16 I'll just avoid you because you're in public on the Patriot
17 Act that was the main problem.

18 Q. Okay I think I understand that. And K is --
19 starts none of the tribe, please explain this?

20 A. This was the very standard clause in,
21 representations and warranties written by big law firms
22 like Morrison & Foerster and it says there were no pending
23 lawsuits and to the knowledge there were no threatening
24 lawsuits and this then became a big bone of contention when
25 they didn't pay SMDC and filed a lawsuit against SMDC you
26 fell out of compliance with K and could not -- if you've
27 got more money you would have to show compliance with K.

28 Q. And that was going to be my next question was did

1 you run into -- did SMDC and the tribe run into a problem
2 with 4.1 K when the tribe sued you?

3 A. Yeah very much so because the investors don't want
4 their money number one financing legal expenses not to do
5 with a casino -- not to do with getting a casino and then
6 Number 2 they don't want my possibility that their money
7 might be grabbed. In this litigation, SMDC got a writ of
8 attachment for 898,000, if the investors had put in new
9 money then we could have gone after the new money as well.
10 As it was, we went after the Old money but the tribe had
11 already spent all of it.

12 Q. Is it your belief as you sit here today that the
13 tribe breached 4.1 K when they sued you?

14 A. Yes.

15 Q. Why?

16 A. Because it says here that there are no -- they're
17 not subject to any pending lawsuits and to their knowledge
18 there is no threatened lawsuits relating to affecting any
19 of the tribe, the council or the gaming authority, well if
20 they file -- if they voluntarily file a lawsuit, then
21 they're in breach of that language.

22 THE COURT: At the time that the parties entered
23 into it there was no lawsuit but it happened afterward
24 right?

25 A. Right. The May -- May 2006, no lawsuit, November
26 2, 2006, lawsuit.

27 Q. BY MR. FORDYCE: And let's let's be clear, the
28 tribe had already received 2.15 million dollars at the time

1 you -- they sued you?

2 A. Right.

3 Q. Okay. So let's move on to 4.3 and 4.4, if you'll
4 just quickly explain though and 4.4 A in particular but
5 start with 4.3?

6 A. 4.3 is simply to note that, the SMDC agreement
7 would not reduce the obligations of the tribe to the
8 investors, in other words any payment to the SMDC made
9 would not change what they were doing with the investors.

10 Q. Why was this important to SMDC?

11 A. Well it was important to the investors more than
12 SMDC but what it made sure is that the investors came
13 first, that was the general idea.

14 Q. Moving on to 4.4 A?

15 A. What this was, very similar to the SMDC agreement,
16 they not only gave their representations and warranties but
17 they also promised, they made a covenant saying going
18 forward we will do everything we can to protect the
19 enforceability of this agreement against us, so just like
20 the SMDC agreement they were promising to go forward and
21 not do anything like this lawsuit where they're claiming
22 the agreement is not valid, their promise was to agree that
23 it was valid.

24 Q. And is it your belief as we sit here today that
25 the tribe breached 4.4 A when they sued SMDC and you?

26 A. No. This was their promise to the Libra investors
27 to keep the Libra agreement valid.

28 Q. Okay.

1 A. So they -- I have no idea whether they breached
2 this or not but any breach of the SMDC agreement would be
3 very different from a breach here.

4 Q. Okay. Let's move on to Section 5 or article Five
5 I believe, I think it may have been. And that is -- starts
6 on?

7 A. '87 six.

8 Q. Yes exactly right '87 six, start [W-G] covenants
9 of the tribe, can you please explain?

10 A. Well this is a could have meant by GT Tribe and
11 the gaming authority to do certain things and it's how you
12 control money that you've released, in other words you
13 release money when had you sign an agreement but that's
14 because there are certain promises in the agreement of how
15 that money will be used and this article Five was the
16 section where the tribe made its promises.

17 Q. Was this an important section?

18 A. Very important to the investors and if they --
19 once again, if they failed to follow this covenant when
20 they came back for new money the investors would say I'm
21 sorry regardless of whether we want to or not you've
22 breached the agreement and we can't because we're
23 breaching -- then we're not following our duty to our
24 investors to manage their money properly so once you have a
25 breach of your investment agreement, the investment
26 managers themselves their hands are tied, they simply can't
27 give you any money otherwise they're breaching their
28 obligations to run the fund in an up and up manner.

1 Q. And looking at 5.1 B , approval of -- approval by
2 investors of certain budgets?

3 A. Right. So what this says is not later than 30
4 days prior to the first day of each fiscal year from the
5 first an [SR-RS] [RAOE] of the effective date through, the
6 tribe shall submit to the investors a budget for the next
7 fiscal year, so it was an ongoing -- not you not only had
8 to follow the budget in Exhibit E but then had you to give
9 them new budgets and new promises to follow the new budget
10 and that's what 5.1 B is.

11 Q. Sorry I interrupted you, we talked about Exhibit E
12 yesterday, that's on Bates zero nine 27 just to confirm,
13 that's the budget being referenced in Paragraph B here?

14 A. No it's referenced in Paragraph A. Paragraph A
15 says use of proceeds, 5.1 A, if you look at Exhibit E which
16 is on nine 27, this was the 2.15 million, actual slightly
17 more than that because of the interest that it would earn
18 in the bank and 5.1 A says use of proceeds, the funds paid
19 to the tribe pursuant to this agreement shall be used only
20 in furtherance of the development of the proposed project.

21 Q. And this is the area of shall we see dispute,
22 correct, it was your belief at the time that --.

23 THE COURT: Why don't we ask him what his belief
24 is instead of telling him what his belief was.

25 Q. BY MR. FORDYCE: What was your belief in terms of
26 whether the proceeds were being used pursuant to this
27 agreement?

28 A. My belief is they weren't being used because of

1 Elizabeth Aronson's willingness to write checks of the
2 tribes money to the benefit of individual tribal council
3 men, that struck me as number one stealing from the tribe
4 but Number 2 it also struck me as violating the investor
5 agreement and making impossible for the investors to
6 approve any new money because Sam Dunlap was supposed to
7 get 50,000 for reimbursements and it doesn't mention
8 anything 20,000 for interest or 1300 for comic books and I
9 basically said I can't participate in that, you either got
10 to get rid of her for agreeing to do that or get rid of me.
11 And they chose to get rid of me and to keep her.

12 Q. And do you have an opinion as to how that played
13 with the Libra investors?

14 A. The Libra investors made clear a number of points
15 that shaped my understanding. Number one, their deal was
16 with the tribe, not SMDC. In other words if SMDC is not
17 part of the evasion any more, they still had the deal with
18 the tribe and if the tribe was misbehaving, it was up to
19 them whether they were going to tolerate the miss behavior
20 or not, that was point number one. Point Number 2 is they
21 very much wanted to see a solution to the problem and if
22 that meant some money for SMDC, maybe they could talk about
23 that. If that meant an outbreak of hostilities and
24 lawsuits [THARBGS] meant that they would not be able to go
25 further because that violating the covenants, they had
26 their duties as investment managers, the guys in New York
27 and Bermuda had no idea what was going on the way Libra did
28 so when they went to cast their vote as a majority in

1 interest, you know they could predict in advance that they
2 would not do it. And then the third thing, perhaps more
3 important than the other two is that a material adverse
4 change had already occurred, SB 175 got canned by Senator
5 Vincent, Senator Polanco didn't [TPOPL] forward with
6 anything new, no substantially similar legislation so this
7 idea of this gamble of 2.1 million dollars to pass that
8 piece of legislation was pretty much dead and that may --
9 that may be why they never came up with any money to -- or
10 any solution to SMDC's debt of 2,000,000 plus, it never
11 went anywhere.

12 Q. And is that your belief?

13 A. Yes.

14 Q. Just E, compliance with laws, fairly
15 self-explanatory, but if you would just explain?

16 A. This is page?

17 Q. That is Bates '87 seven, the middle of the page?

18 Q. ?

19 A. Yeah what that said is that that the tribe, GT
20 Tribe, the tribal council and the gaming authority will
21 comply will all capital L legal requirements, which were
22 not just laws, the laws, constitution, that sort of thing.

23 Q. And was this part of your concern that the tribe
24 was violating this clause when they spent money not in --
25 not according to the budget?

26 A. Well, I was concerned with violations of their
27 fiduciary duty and with fraudulent transfer laws, uniform
28 fraudulent transfer act and that was shown in the McShane

1 memo to the tribe that I worked on with him, he present
2 today the tribe in September 10. However, most of the
3 problems were not problems of law, it was just problems of
4 violating the investor agreement and putting Libra and the
5 other dozen investors in the position of not being able to
6 fund any more, that meant that SMDC couldn't get paid any
7 more and that would also be the end of the casino project
8 since it was you know -- the casino project was of a
9 magnitude that really had you needed investor money to push
10 it forward.

11 Q. Going onto G, compliance with covenants and other
12 agreements, what was the purpose of this particular
13 provision?

14 A. This said that the tribe would -- would do what's
15 necessary to comply with all material respects with the
16 affirmative and negative covenants that far they make in
17 all other agreements pertaining to the proposed project.

18 Q. And would that --?

19 A. This -- this was a general reference but this
20 mainly had to do with the SMDC agreement.

21 Q. Okay.

22 A. In other words it was a promise to the investors
23 to say we won't destroy the casino project but not paying
24 SMDC which would cause all the amounts to become
25 immediately due and put a \$2,000,000 boulder in the -- you
26 know across the road to another investment transfer. So
27 this is where they specifically agreed we will follow the
28 covenants in the SMDC agreement and other agreements and

1 then when they -- they failed to do this, they didn't pay
2 SMDC, they didn't pay about a dozen -- about a half dozen
3 vendors, Sacramento lobbyists, the famous field poll, they
4 stiffed the famous organization of the field poll, they
5 stiffed the lobbyist, they stiffed the various
6 professionals that had made graphics for us and that was
7 awful in violation of this covenant made to the investors
8 and against this intention.

9 Q. Did you discuss this provision with anyone from
10 the tribe?

11 A. Yeah. Well, yes. This provision and all the rest
12 of the reps and warranties to make sure they understood
13 what their obligations are. They had representation,
14 warranties and these covenants.

15 Q. Who did you discuss them with?

16 A. The tribal council on the various occasions
17 mentioned in the resolution approving this.

18 Q. Was this practicing law for the tribe in your
19 belief?

20 A. No this was SMDC trying to make sure that the
21 casino project could go forward and that the tribal council
22 didn't take an action that derailed it.

23 Q. Okay. Let's turn to page Bates zero eight '79
24 which is article seven. Mr. Stein could you just take a
25 look at 7.1, 7.2 and explain your understanding of these
26 provisions?

27 A. These were very similar to the provisions of the
28 SMDC agreement, 7.1 is entire agreement which supersedes

1 any oral agreements, any representations or warranties that
2 have -- that relate to the subject matter and what it means
3 is it's an integrated agreement.

4 Q. Okay. And 7.2?

5 A. 7.2 is the obligations of the tribe. It's them
6 saying that they agree that they are -- that they have
7 made -- that they are making a valid and binding agreement.

8 Q. Why was this important?

9 A. This was important because Libra wanted to know
10 exactly the same thing SMDC wanted to know which thaws the
11 agreement was valid and binding and they were acknowledging
12 that in writing.

13 Q. And then looking at seven point 13 which is on the
14 next page, Bates zero '88 zero titled legal advice, please
15 explain your understanding of this provision?

16 A. Well if I can read it, 7.3, legal advice, the
17 parties here to acknowledge that they have been advised and
18 encouraged to seek legal advice from independent counsel
19 and given the opportunity to do so prior to signing this
20 agreement. Each of the investors acknowledges that
21 Morrison & Foerster LLP has represented the investors as a
22 collective group and has not provided advice to any
23 specific investor vis-a-vis its relative rights under the
24 agreement with any other investor.

25 Q. What is your understanding of that provision?

26 A. This was to show that the tribe -- you know there
27 was no idea -- obviously Libra didn't have an
28 attorney-client relationship with the tribe but in any big

1 agreement like this you make sure that both parties had --
2 were told to seek legal advice from independent counsel and
3 had the opportunity to do so.

4 Q. Is it your belief this is an important provision?

5 A. Yes it's important just like the similar provision
6 was in the SMDC agreement to show that the parties had
7 equal negotiating power because they had counsel on their
8 side and. In the SMDC context of course you the additional
9 concern to show that Jonathan Stein was not their attorney.

10 Q. So Mr. Stein when you left the project, what
11 happened?

12 A. Well I was -- I left the project in two phases,
13 there was a September 9th resignation as an officer of the
14 tribe after the big blowout on September 9th and with Sam
15 Dunlap looking over my shoulder to make sure it was in
16 writing, and then there was their October 3 termination of
17 SMDC which ended the SMDC agreement and ended any -- I had
18 very, very limited duties as an independent contractor,
19 very, very limited liability but once it was over I was a
20 free agent so much like a basketball player that gets cut
21 from a basketball team, you can do whatever you want, you
22 can join another team, you can go to Australia and place
23 basketball there, you can become a coach. So after October
24 3 I was a free agent.

25 Q. Why did you say to Ms. Aronson basically it's you
26 or me?

27 A. For the reasons set forth in the letter for the --
28 to her that we went over at great length.

1 Q. Okay. Is it your belief at the time of the Libra
2 agreement that you were really the linchpin in making this
3 deal happen?

4 A. Yes. The Libra -- the Libra investors never met
5 the tribal council prior to signing the agreement and on
6 the day of the agreement they -- I don't think they -- the
7 tribal council bothered to come in to Libra, they just left
8 the signature pages.

9 Q. And is this still your belief as you sit here
10 today?

11 A. Yes.

12 Q. [SKW] even after the tribe terminated you and we
13 will touch on this after we're done with the Libra
14 agreement which we're actually quite close to being done,
15 were you still willing to continue in some sort of role on
16 the casino project even post termination?

17 A. I was willing to continue on the casino project or
18 I was willing to completely walk away and get out of the
19 way. Once again, I was owed a tremendous amount of money
20 and the Libra investors of course had money so as far as I
21 was concerned if they said here's some negotiated amount of
22 money get lost I'd be happy to get lost, if they said
23 here's some negotiated amount of money and we'll pay you
24 some nor to stick around, I'd be happy to stick around, if
25 they said hey go mop the floors of the tribal council every
26 day and you know wash their feet as they walk through the
27 door, I'd be happy to do that too because the alternate
28 would be stuck being stuck not being paid money and taking

1 a loss of five solid years of work.

2 Q. Okay. Let's move on to another exhibit in the
3 Libra agreement. This is Bates number 0938, resolution 96
4 which is the approval of the development funding agreement.

5 THE COURT: We're on the same Libra agreement?

6 MR. FORDYCE: Yes, Your Honor, that's correct.

7 THE COURT: But you're not a different section.

8 MR. FORDYCE: Correct. It's Bates 0938.

9 THE COURT: Thank you.

10 Q. BY MR. FORDYCE: Have you had a chance to look at
11 that Mr. Stein?

12 A. Well there are actually two resolutions here, I'm
13 trying to figure out.

14 Q. We've got '96 and --?

15 A. And then there's resolution '06 '01 so it may be
16 that one is a tribal gaming authority and one is the tribe.

17 Q. I think that looks correct. Let's look at '96
18 first then?

19 A. So '96 is the GT Tribe and then the gaming
20 authority is pretty much a copy it.

21 Q. The first three whereas clauses, is there anything
22 unusual in there, can you just explain them briefly?

23 A. Yeah. The these were saying that they had
24 engaged -- the tribe had engaged Libra securities to find
25 the dozen investor that's they eventually found and that --
26 originally Libra securities was engaged by the tribe and by
27 SMDC both similar to how Marilyn Barrett was engaged by the
28 tribe and by SMDC both.

1 MS. IBARRA: Objection; lacks foundation. We
2 haven't seen anything that says that SMDC.

3 THE COURT: I think there's a joint, joint
4 representation?

5 A. Forgive me, whereas -- whereas on March 11, 2006
6 the tribal council adopted Resolution 89, engagement of
7 Libra securities by tribe and by Saint Monday Development
8 Company, LLC.

9 THE COURT: I thought you were objecting to joint
10 representation, SMDC and the tribe by Marilyn Barrett.

11 MS. IBARRA: Yeah we talked about that yesterday
12 though.

13 THE COURT: Okay.

14 MS. IBARRA: So my objection was about Libra.
15 Okay.

16 THE COURT: Well he read the clause.

17 MS. IBARRA: He read it so.

18 MR. FORDYCE:

19 Q. And Mr. Stein moving on to the next whereas
20 clause, March 4, March 11, March 15. What was the point of
21 this [KHRAUFZ]?

22 A. March 15 whereas on March 15, 2006, the tribal
23 council adopted resolution '90 approving engage letters and
24 time sheets approved a Libra securities and Saints monetary
25 development for financing. Apparently they did two
26 different approvals here, number of '89 and then four days
27 later resolution '90.

28 Q. Okay. And do you see the next -- do you see the

1 fifth whereas clause which has the dates March 4, 11, and
2 15 and then the tribal council spent over six hours?

3 A. Right.

4 Q. What was the point of this?

5 A. So whereas on March 4, March 11 and March 15, 2006
6 the tribal council spent over six hours reviewing earlier
7 Libra drafts of the tribal financing and the SMDC financing
8 including a term sheet for the tribal financing, a term
9 sheet for SMDC financing and the budget showing how
10 financing proceeds would be used by tribal council and
11 gaming authority.

12 Q. What was your understanding of this?

13 The way the deal originally started is the -- to
14 avoid any questions over the tribes misuse of funds. They
15 were going to directly funds SMDC for the casino project
16 and then directly fund the tribe in two different ways.
17 That was the -- and that's why the term sheet was
18 originally signed by Libra securities and SMDC, they were
19 going to fund both of those entities.

20 Q. Was this an important provision?

21 A. Yes it would be important for the SMDC to have a
22 direct tap to investor funds to get paid, certainly after
23 circumstances where the tribe refused to pay SMDC any money
24 at all, that would have been much better, much more
25 preferable.

26 THE COURT: So they were going to pay you directly
27 is that what -- Libra?

28 A. Right, they were going to have two separate

1 financing so instead of 2.15 million to the tribe it would
2 be for example 1.25 million to the tribe and 900,000 to
3 SMDC.

4 THE COURT: Why did that not happen? In other
5 words if that was the set up where you would get funding
6 separately or money going into your account separately,
7 that would have avoided maybe some dispute so why did that
8 not happen?

9 A. Honestly Your Honor because I was stupid loyal and
10 trusting.

11 THE COURT: Uh-huh?

12 A. The tribal council wanted control of all the
13 money, they were with the tribe, I was -- I was stupid
14 loyal and trusting and I let them have it and then they
15 turned around and gave me none of it and destroyed the
16 investment as well.

17 Q. BY MR. FORDYCE: Moving on to the last two whereas
18 clauses that go on to the next page, take a look at those
19 and please explain your understanding of those.

20 A. Whereas outside counsel Marilyn Barrett and
21 McGuire Woods LLP and Jonathan Stein have had several long
22 negotiating sessions with Libra on behalf of the tribe
23 prior to creation of the final version of the development
24 agreement attached as Exhibit A.

25 Q. What was the point of this clause?

26 A. This was showing that the -- you know this was
27 signed by the six tribal council men, this formalized that
28 Marilyn Barrett had been involved in the deal, she was no

1 longer involved own May 20th.

2 Q. And also moving on to that next whereas clause?

3 A. Whereas on May 6, May 10, May 13 [#*] 13 and May
4 20, 2006 in lengthy meetings, the tribal council has had
5 the opportunity to have review, discuss and consider
6 Exhibit A with outside counsel Marilyn Barrett, tribal
7 general counsel Rae Lamothe and assistant tribal general
8 counsel Elizabeth Aronson and obtain their advice.

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

10 A. This was much [HRAOEUFBG] the SMDC agreement, this
11 was the tribal council telling the investors that they had
12 actually received legal advice from Marilyn Barrett, Rae
13 Lamothe, and Elizabeth Aronson.

14 Q. Did you have any reason to believe at the time
15 anything in these whereas clauses was untrue?

16 A. No, no. And Furthermore, I'll know that -- I
17 don't mind noting that I'm not listed as the attorney
18 giving legal advice in this whereas clause.

19 Q. Uh-huh do you have any reason to believe -- and
20 again this is just whether you know -- that the tribe
21 didn't understand the terms of the Libra deal including the
22 legal advice they received?

23 A. No I thought they understood it really well. As I
24 said, Sam Dunlap was a very smart and financially
25 successful guy, signatory Adam Loya was an executive with
26 the tan I have program in Los Angeles, he dealt with Los
27 Angeles County and State of California all the time, Martin
28 Alcalá was an honors graduate of UCLA.

1 MS. IBARRA: I'm going to object as lacks
2 foundation?

3 A. Virginia Carmelo.

4 THE COURT: Hold on?

5 A. Was quite sharp and aware of [TPHEUPGS].

6 THE COURT: Hold on.

7 MS. IBARRA: I'm going to object as to lacks
8 foundation as to mart as education.

9 THE COURT: Sustained.

10 MS. IBARRA: There's no evidence of that.

11 THE COURT: Sustained the answer is stricken.

12 Q. BY MR. FORDYCE: Mr. Stein looking at the next
13 whereas [TR*Z] a number of terms and conditions of the
14 development agreement did you see anything stand out to you
15 there or is this just an encapsulation of the Libra
16 agreement we've been looking at?

17 A. This was an encapsulation of the Libra agreement,
18 I don't know if this resolution was written by Rae Lamothe
19 or by the Libra attorney at Morrison & Foerster.

20 Q. Any reason to believe there were any inaccuracies
21 at the time you first saw this document?

22 A. No.

23 Q. And do you still believe it's true as you sit here
24 today?

25 A. Yes. Let me just -- let me just read it.

26 Q. Sure.

27 A. Sure it's fine.

28 Q. And looking at the last three whereas clauses on

1 '09 40 is there anything unusual in any of those three?

2 A. Well the first one is the main one that in this
3 [con|could not] [STEBGS] important, whereas the tribal
4 council after being fully advised as to comport and
5 obligation that's arise pursuant to the development funding
6 agreement and after each voting member of the tribal
7 council has had the opportunity to review the agreement
8 attached here to and discuss the same with Marilyn Barrett,
9 Rae Lamothe and Elizabeth Aronson prior to voting consider
10 it to be in the best interest of the tribe to execute the
11 development agreement.

12 Q. At the time you saw this document first, did you
13 believe this was true?

14 A. Yes and it refreshes my recollection that it's
15 probably -- probably written by the MoFo attorney because
16 it says comport and obligation and that's a new phrase to
17 me, I never saw Rae Lamothe use that phrase.

18 Q. And as you sit here today do you believe it's
19 accurate and true?

20 A. Yes yes and I'll also note that it doesn't say
21 they were advised by Jonathan Stein as an attorney.

22 Q. Okay. And then moves to the there for be it
23 resolved provisions and again we're just trying to get
24 there this as rapidly and accurately as we can?

25 A. These provision [WR-TZ] very similar to the SMDC
26 approvals, first they -- the first one adopts and approved
27 the development funding agreement as an action of the
28 tribal council and the tribe, then the next one says the

1 development and funding agreement is declared the effect it
2 valid and binding obligation of the tribe and the tribal
3 council so that mimics language in the SMDC approvals, and
4 then the exclusion by Virginia Carmelo and Martin Alcala,
5 then the third one says it's the index of the council to
6 bind the tribe and any successor entity, again similar to
7 the SMDC agreements and be it resolved further that the
8 tribal council -- the tribal secretary be authorized and
9 empowered to certify the resolution, so it's again similar
10 to the SMDC agreements.

11 Q. And as you look in the next page, Bates '09 41,
12 did you see these individuals execute this document?

13 A. Yeah it was quite a celebratory occasion.

14 Q. Let's just move to the next document on 0943,
15 certificate of en couple ban see what is this?

16 A. That's part of how MoFo did things, they wanted to
17 show that the people signing were incumbent members of the
18 tribal council and this one is to do with the gaming
19 authority as well.

20 Q. Another quick question about resolution six, I
21 just forgot to ask, why were the attorneys not signatories
22 to this document?

23 A. The attorneys are not signatories to any tribal
24 council resolution because they're not members of the
25 [HR*EBGT]-d tribal council so their role is to approve the
26 agreement not to approve the resolution.

27 Q. And Mr. Stein going to the last document here --?

28 A. And that was the same -- and let me just add.

1 Q. Sure.

2 A. That was the same way the tribal council
3 resolutions were done with SMDC and with every other vendor
4 and every other resolution that GT Tribe did.

5 Q. And Mr. Stein looking at resolution number '06
6 dash '01 which starts on Bates zero '94 four?

7 A. Uh-huh.

8 Q. Does this appear to be a duplicate -- I don't mean
9 duplicate I know the font is different and I'll ask you
10 about that, but does this appear to be the same content?

11 A. Yes.

12 Q. As respiratory '96?

13 A. Yes. Almost every whereas clause and resolution
14 is the same.

15 Q. And what's the difference in these two documents
16 if you know?

17 A. Well the tribal gaming authority was never
18 formally set up, this was the first effort to set it up and
19 that's why this resolution is '06 '01 meaning it's the very
20 first resolution. The gaming authority was set up, the
21 tribe hired another lawyer, Judith Schwartz in Washington,
22 D.C. who had done the Mohigan tribes gaming authority, they
23 had the biggest casino -- the second biggest casino in the
24 country at the time, and so she did the gaming authority
25 papers for this. I don't know if this resolution was hers
26 or was MoFo's, but it's identical so I think it was MoFo's.
27 And the tribal council would then sit as tribal gaming
28 authority and the two would be separate organizations so

1 this was the first effort to separate the two
2 organizations.

3 Q. And then there's just one more short document in
4 the Libra agreement that I would like us to look at and
5 that starts on Bates '09 29 and it's the flow of funds
6 agreement entitled.

7 THE COURT: '09 29.

8 MR. FORDYCE: Correct Your Honor.

9 Q. BY MR. FORDYCE: Do you see that document Mr.
10 Stein?

11 A. Yes.

12 Q. Have you seen it before?

13 A. Yes.

14 Q. Can you please explain what this is?

15 A. This document was to show how the money -- where
16 the money would go and exactly how the dollars and cents
17 would flow from Libra's 2.15 million to the tribe.

18 Q. So why was -- I think that's fairly
19 self-explanatory but why was this important?

20 A. Well it's what you typically do with investor
21 money. So this says that good land and Libra would put in
22 Five 40,000, 93,000 would be paid to Libra for its fee, its
23 investment banking fee, 70,000 would be made to more and
24 foreclosure their legal work in writing the agreement, they
25 did 90 percent of the work so that's why it's such a large
26 figure, 59 hundred was paid to another lawyer, which will
27 manometer cut letter pick erg which was advising on Indian
28 issues that MoFo didn't have a great expertise in. And

1 then 17 4,000 was held to pay McGuire Woods and this was --
2 by this time Marilyn Barrett was gone she had wanted
3 \$300,000 or she would kill the deal and the agreement would
4 the investors is well that's unfortunate but we'll set
5 aside 17 4,000 because it's even more than the 130,000 that
6 the agreement contained but they would hold it available --
7 for later settlement with McGuire Woods.

8 Q. I notice SMDC --?

9 A. And Marilyn Barrett.

10 Q. Sorry. I notice SMDC is not mentioned anywhere in
11 the flow of funds agreement?

12 A. No. No. SMDC would get their money from the
13 tribe, and again I was stupid and loyal and trusting
14 instead of saying no no no SMDC has got to get money right
15 up front out of this, I said no no no I'll get it from the
16 tribe.

17 Q. And just to be absolutely clear, you see on 9:30,
18 '93 one and '93 two, we see a fully executed agreement is
19 that correct, to your understanding?

20 A. Yes actually it's not '93 one and '93 two, the
21 execution pages, there are about 20 [PEUPBLGZ] of execution
22 earlier on.

23 Q. Oh I'm just speaking in terms of this agreement?

24 A. Yes for the flow of funds agreement, that's right.

25 Q. And you're correct, starting on --.

26 THE COURT: I understand you were for bearing from
27 collecting your full fee because it would have swallowed up
28 all the money, right?

1 A. There was no agreement for SMDC to forbear
2 collecting the full fee on that day but I agreed to collect
3 50,000 a month, 25,000 towards the amount accrued and
4 25,000 for that month. That worked for May, June, July, by
5 August they stiffed me for the money and as part of putting
6 [PRERB] he you are on me --.

7 THE COURT: But did they have the money, the
8 investor money yet?

9 A. Oh they had the money two days after May 22 the
10 money was in their account, it was actually paid.

11 THE COURT: I guess my question was you're saying
12 that over time the -- I thought you said that you
13 forbear -- you for bore, is that the right word, you for
14 bore from collecting 2.1 million because it would have
15 swallowed up all of the investor money?

16 A. That was --.

17 THE COURT: So I guess I'm --?

18 A. That was --.

19 THE COURT: Go ahead?

20 A. Oh I'm sorry.

21 THE COURT: No no go ahead I'm not understanding
22 it?

23 A. I should have waited a beat. In 2003, when [-RT]
24 resolution 46, I forbear for 2003, four and five. But
25 so -- it took so long to get investor money that those
26 periods elapsed by 2006 when the money actually came in,
27 that's how hard it was to accomplish what I accomplished
28 and so the forbearance agreed to in resolution 46 had

1 lapsed and I had no requirement to forbear further.

2 THE COURT: Okay?

3 A. And being the one negotiating the deal points, I
4 was in the perfect position first of all to say no no no
5 you've got to fund SMDC and the tribe separately because
6 I'm worried about them stealing the money, I wasn't and how
7 wrong I was proven, and then second in this flow of funds
8 agreement I could have said no no no I need \$300,000 right
9 up front which is in fact what Sheppard Mullin actually
10 ended up doing, they got up \$300,000 shall \$350,000 right
11 up front and in this flow of funds agreement I was in the
12 same position as developer as they were as a lawyer and I
13 took a pass on that, again in retrospect in being still
14 suing 11 years later trying to get the money and being told
15 I was their lawyer now and all shall and I breached all
16 sorts of duties I was just stupid, trusting and loyal, that
17 was a mistake.

18 Q. BY MR. FORDYCE: And just to clean up the final
19 point that Mr. Stein referred to, Bates number zero '88 two
20 through Bates 089 six are the executed signature pages for
21 the investors and the tribe?

22 A. Right so you've got 14 different pages of the
23 various investor groups that Libra had pulled together and
24 to get any more money a majority in interest of those
25 investor groups [WOFR] to agree to the next -- to any more
26 money that the 2.15 million.

27 Q. And Mr. Stein was there any ambiguity at any point
28 that Libra was taking a risk by entering into this

1 agreement?

2 A. Oh well it was a guy gigantic risk, it was we're
3 willing to lose this money on the chance of making 20 times
4 that money, the same way as any investor in a silicone
5 valley start up, I mean the investors of Facebook did
6 really really well, think of the hundreds of times
7 investors lost their money with start ups that went
8 nowhere.

9 Q. And as you sit here today or at the time of this
10 agreement did you believe that you were somehow defrauding
11 the tribe by this agreement, the Libra agreement?

12 A. No. It's astounding to hear the testimony that I
13 defrauded the tribe. The exact -- the exact thing that
14 they say defrauded the tribe which was to get state law
15 approval is exactly what got this investment in the tribe
16 made and after they, the tribe, lost their relationship
17 with Libra they never found another investor, it's been 11
18 years, they've never found another investor to my
19 knowledge.

20 Q. And just ultimately, and you've said it before,
21 what was your intention, what was your goal with Libra
22 funding the agreement?

23 A. To fulfill the terms of the SMDC agreement, to
24 show that I benefited the tribe by bringing in 2.15 million
25 dollars based on the exact same theory that they say was
26 fraud.

27 Q. That's it for the Libra. Your Honor could we take
28 just a quick break.

1 THE COURT: Sure we'll take a break.

2 MR. FORDYCE: Thank you.

3 THE COURT: Good timing.

4 (Break taken.) 11:10 AM to 11:18 AM.

5 THE COURT: Gabrielino versus Stein BC361307. You
6 may continue.

7 MR. FORDYCE: Okay thank you Your Honor.

8 THE COURT: I've got to be somewhere at Five to 12
9 right down stairs so just so you know.

10 MR. FORDYCE: Okay I'll talk --.

11 THE COURT: So a little bit sooner.

12 Q. BY MR. FORDYCE: Mr. Stein we're now going to turn
13 to the matters surrounding the termination of SMDC so I'd
14 like you to first look at Exhibit 67 seven and that's in
15 our Defendants volume two, I'll just give everyone a second
16 to get there. Have you -- are you there, 677?

17 A. Yes.

18 Q. Have you seen this document before?

19 A. During discovery and during the depositions much
20 with Jim McShane.

21 Q. Can you explain your understanding of the
22 document?

23 A. This was the actual signed engagement letter with
24 the Gabrielino tribe and Sheppard Mullin member dated
25 September 29.

26 Q. What is your understanding of the significance of
27 this document?

28 A. It showed that Sheppard Mullin that began

1 informally advising GT Tribe on September 9th -- I'm sorry
2 on September 13, two weeks later was in fact hired as their
3 attorney.

4 Q. And what was your understanding what role Sheppard
5 Mullin was going to play for the tribe as their attorney?

6 A. My understanding was radically changed by
7 September 29 so before September 29, my understanding is
8 that they were going to try to find a negotiated exit for
9 SMDC that -- and also that would satisfy everybody and
10 hopefully preserve the casino project and the Libra
11 agreement. That was before September 29th. On September
12 29th the same day as this was signed, I received a letter
13 from Sheppard Mullin that made clear that we're just going
14 to get rid of SMDC without providing for any payment.

15 Q. This was written by Jim McShane is that correct?

16 A. Yes.

17 Q. And do you see an hourly rate going from the page
18 Bates zero 184 to 108 Five starting an hourly rate of 59 \$5
19 an hour?

20 A. Right I think that was for bill Scott who was
21 their Indian casino expert. Mr. McShane charged 49 \$5 an
22 hour.

23 Q. Do you have any knowledge, personal knowledge as
24 to how this particular arrangement was going to be funded
25 by the tribe?

26 A. I have knowledge based on what discovery showed is
27 that they took casino money to pay Sheppard Mullin, not
28 just the \$15,000 called for in this agreement but 352

1 thousand dollars before November 1.

2 MS. IBARRA: I'm going to?

3 A. So between September 29 and November 1 they paid
4 Sheppard Mullin --.

5 MS. IBARRA: I'm going to object on the basis of
6 this was casino money, the evidence was it was Libra money.

7 THE COURT: Okay. It was Libra money, I think --
8 did you mean that when you said --

9 A. Yes.

10 THE COURT: Okay Libra money, all right.

11 MS. IBARRA: Okay.

12 MR. FORDYCE: Okay let's go ahead and see if
13 there's anything else in here. Oh and I see the 15,000
14 you're referring to is that in Paragraph 4.

15 A. Yes it's 15,000 but they later charged 352
16 [thou|thousand] and were paid 352 [thou|thousand] all
17 before November 1.

18 Q. Do you have any knowledge as to whether Sheppard
19 Mullin was terminated by the tribe?

20 A. Yes, there were later tribal resolutions that I
21 reviewed and discuss [TPH-D] deposition, they terminated
22 Sheppard Mullin and then wanted to sue them for
23 malpractice, I don't know if they ever filed a lawsuit for
24 malpractice against [SHEP] [PH*UL].

25 Q. Let's move on to exhibit 57 one, I'm not sure if
26 that's, that's in our first.

27 THE COURT: What was the claim of malpractice.

28 Q. BY MR. FORDYCE: Do you know Mr. Stein?

1 A. I don't know. I think that it was --.

2 THE COURT: Well what -- how did you find --?

3 A. It was a tribal council resolution by the same
4 tribal council as here and it was shortly after Sheppard
5 Mullin left the lawsuit.

6 THE COURT: So you don't know what it was?

7 A. No.

8 MS. IBARRA: And there wasn't a claim, right?

9 A. No there was a claim of malpractice [SRO*ET]-d on
10 unanimately by the trying to sue Sheppard Mullin for the
11 malpractice, I don't know if they actually filed the suit
12 but they adopted the resolution.

13 MS. IBARRA: I think it was in the minutes but no
14 resolution.

15 Q. BY MR. FORDYCE: So 57 one Mr. Stein.

16 THE COURT: Okay so you're saying you haven't seen
17 a resolution to that effect yet?

18 A. I have.

19 MS. IBARRA: I've seen minutes?

20 A. I have.

21 MS. IBARRA: Where it was discussed. I haven't
22 seen a resolution that was adopted to take action and I
23 certainly having seen anything, you can take judicial
24 notice of what was in the court files and this tribe has
25 never filed a lawsuit against shepherd.

26 THE COURT: Okay well it sounds like unless
27 there's some resolution to point to it it's probably
28 speculation.

1 MS. IBARRA: Speculation?

2 A. Sure.

3 THE COURT: So sustained on inspection but she did
4 say there was minutes, so the stipulation is there's
5 minutes. There was a discussion about it, but no
6 resolution.

7 A. There was minutes, but not a resolution and in the
8 minutes I believe there was an adoption by vote is what the
9 minutes showed, there was an adoption by unanimous vote to
10 sue Sheppard Mullin for malpractice.

11 MS. IBARRA: Objection to foundation until about
12 see those.

13 THE COURT: Well let's see the minutes, where are
14 the minutes?

15 A. Well we need to see.

16 THE COURT: Where are they Mr. Stein.

17 MR. FORDYCE: Is it in an exhibit?

18 A. It should be in an exhibit that we have.

19 THE COURT: Well I'll strike it until you show me
20 that there's minutes to that effect.

21 MR. FORDYCE: All right in that case I'm not going
22 to waist the Court's time right now with that. We'll just
23 move on and see if I cannot find it in due course. So Mr.
24 Stein 57 one please and that's in the first book of
25 Defendants cross complainants first book, are you there.

26 A. Yes.

27 Q. Have you seen this --.

28 THE COURT: We're in volume now one now yes.

1 MR. FORDYCE: Correct Her Honor it's 169 last
2 exhibits.

3 THE COURT: What's the number again.

4 MR. FORDYCE: 57 one.

5 THE COURT: You can start examining I'm find it.

6 Q. BY MR. FORDYCE: Okay Mr. Stein so you've seen
7 this document before?

8 A. Yes.

9 Q. And I believe this has actually been admitted.
10 Please explain what this document is?

11 A. ?

12 A. This is the termination notice of Sheppard Mullin
13 on October 3.

14 Q. And that was terminating SMDC?

15 A. Yes.

16 Q. As opposed to gaming authority that ended on
17 September 9th, correct?

18 A. Well that's mentioned in here, as well.

19 Q. It is in fact. Could you take a look at the first
20 paragraph and?

21 A. Yes.

22 Q. And can you read part of that into the record?

23 A. This is the October 3 letter exhibit 57 one, dear
24 Mr. Stein on September 9th, 2006 orally and in writing you
25 communicated your resignation as chief executive officer of
26 the Gabrielino-Tongva Tribal gaming authority, the tribal
27 council has determined that it is in its best interest as
28 well as well as the best interest of the GTGA

1 Gabrielino-Tongva Tribe, the tribe to accept your
2 resignation effective immediately.

3 Q. Is this accurate?

4 A. Well they actually accepted on September 9th but
5 he's repeating it again.

6 Q. And then please go on?

7 A. To the extent that your position -- to the extent
8 that your position is that you did not resign or intend to
9 resign, the tribal council exercises rights of termination
10 and therefore, effective immediately your engagement as
11 chief executive officer of GTGA or any other employment or
12 engagement on behalf of the tribe, tribal council or GTGA
13 is hereby terminated effective immediately.

14 Q. In your mind was there any ambiguity as to whether
15 you resigned or intended to resign?

16 A. There was the same ambiguity that this court
17 pointed out which is there was -- it said intended to
18 resign and what I believe Sheppard Mullin is doing here is
19 the belt and suspenders, making sure the resignation is
20 full. There was also another controversy by this time in
21 that I had affirmatively tried to stop the tribe from
22 transferring the Wells Fargo money and Sheppard Mullin in
23 fact had drafted letters for me to stop that transfer of
24 money in their efforts to make sure that breaches of
25 fiduciary duty were not occurring.

26 MS. IBARRA: I'm going zero to be that it lacks
27 foundation that Sheppard Mullin drafted those letters.

28 MR. FORDYCE: Those exhibits are part of the

1 record.

2 THE COURT: Are they on she will mull letterhead
3 or no.

4 MR. FORDYCE: That would?

5 A. The e-mails.

6 MR. FORDYCE: It's e-mails back and forth.

7 THE COURT: Oh e-mails. So there wasn't a letter
8 drafted?

9 A. No no the e-mail said please find attached the
10 letter for Wells Fargo bank and Union Bank and then we --
11 several drafts went back and forth between Jim McShane and
12 myself.

13 THE COURT: So there's a joint drafting.

14 A. Yes.

15 MS. IBARRA: Well but I'm objecting that Sheppard
16 Mullin ever adopted Mr. Stein's you know draft, in fact
17 McShane testified that he specifically said do not send
18 this letter or this e-mail and Mr. Stein sent it anyway,
19 that was -- there was a lot of testimony towards that.

20 THE COURT: Okay. All right.

21 MS. IBARRA: So that's disputed.

22 Q. BY MR. FORDYCE: So Mr. Stein moving on to still
23 in exhibit 57 one, the second paragraph references the SMDC
24 agreement. Was the purpose of this letter by your
25 understanding also to terminate the SMDC relationship?

26 A. Right, after he dealt with -- in the first
27 paragraph he dealt with the nominal position that I held
28 pursuant to the SMDC agreement with the tribal gaming

1 authority, not the tribe but with the tribal gaming
2 authority and then.

3 Q. I'm going to stop you there, can you explain what
4 you mean by nominal we just want to be very clear about
5 that?

6 A. Pursuant to the SMDC agreement I could take a
7 position with the tribe if it helped the just like an
8 outside salesperson would be a vice president for marketing
9 with a small company so he doesn't have to constantly say
10 I'm an independent contractor.

11 THE COURT: So what were your -- what did you do,
12 in other words what --?

13 A. The gaming authority was not set up yet, it was --
14 it was set up just to get the money from the Libra
15 agreement, its only function was top get the cash in to
16 establish a bank account at Wells Fargo.

17 THE COURT: So the only function of the tribal
18 gaming authority?

19 A. Was to funnel money.

20 THE COURT: Was to funnel money. Okay. So was
21 there a bank account set up.

22 A. Yes.

23 THE COURT: Okay and who set it up?

24 A. The tribe set it up and Elizabeth Aronson was one
25 signatory and as CEO I was the other. And after September
26 9th they removed my signature authority on the account.

27 THE COURT: And you consider that nominal though,
28 do you consider having control of an account nominal?

1 A. Well I didn't have control of it it required the
2 signature of another --.

3 THE COURT: I understand that but do you still
4 having signatory over an act of potentially millions of
5 dollars kind of nominal.

6 A. Yes because it was under the SMDC agreement so the
7 court makes a good point, in other words there is substance
8 to that but the SMDC agreement foresaw that type of thing
9 and said that you -- there would be no fiduciary duty even
10 though I might be -- have this position with the tribe, in
11 this case it wasn't within the tribe, it was with an
12 authority that had no operations.

13 THE COURT: And did you have any voting authority
14 as a --?

15 A. No.

16 THE COURT: Okay.

17 MR. FORDYCE: And so Mr. Stein this was -- sorry
18 go ahead?

19 A. And to answer the Court's question, that was
20 proven when I wrote the banks with Mr. McShane's help and I
21 wrote the banks.

22 THE COURT: Well he says over his objection
23 apparently but?

24 A. Well he --.

25 THE COURT: You were going back and forth try to
26 draft a letter, I guess he never approved it but you sent
27 the letter but you were going back and forth with McShane
28 is how --?

1 A. That's what her rendition is if you go back to the
2 transcripts you'll see that in fact there is no letter
3 saying don't send this letter, she's -- Ms. Ibarra is
4 remember [T-G] wrong.

5 MS. IBARRA: It's an e-mail?

6 A. There was --.

7 THE COURT: It's an e-mail?

8 A. That's her contention.

9 THE COURT: Well let's see the e-mail.

10 MS. IBARRA: I'm looking for the exhibit number.
11 I'm sorry there's a lot of McShane e-mail so it's going to
12 take me a little bit.

13 THE COURT: All right well?

14 A. If I may mention in the meanwhile, in either
15 event, it didn't work, the banks released the funds to
16 Elizabeth Aronson.

17 THE COURT: Okay but I want to find out because
18 that's a bone of contention?

19 A. Uh-huh. Niall can you look on the trial summary
20 for that day, perhaps you can find an exhibit that will
21 help, I think she's referring to exhibit 247 to 249.

22 MS. IBARRA: In yours?

23 MR. FORDYCE: No in yours.

24 MS. IBARRA: So those were the ones that came in
25 from Mr. McShane's.

26 MR. FORDYCE: Yeah.

27 MS. IBARRA: So we need to find them they're not
28 in our books.

1 THE COURT: Neli can you look for the 247, 249 the
2 McShane e-mail?

3 A. Your Honor would it help if I looked up here as
4 well.

5 THE COURT: Sure you can look. Binder four of
6 four ends at four [#39D] so.

7 THE COURT: Are you sure you're looking at the
8 right number.

9 MR. FORDYCE: I'm sure?

10 A. Niall do you want to see if the PDF is there.

11 MR. FORDYCE: Yeah there's a PDF I think
12 specifically 248?

13 A. Your Honor may have I look at the PDF with him or
14 would the court like him to grab the computer.

15 THE COURT: No that's okay, did you say it.

16 MR. FORDYCE: Yes.

17 THE COURT: It's 240.

18 MR. FORDYCE: 248 Your Honor I believe is the one
19 counsel is referring to and let me check 249.

20 MS. IBARRA: Can I see.

21 MR. FORDYCE: Yeah that's the rough draft McShane
22 saying?

23 A. Mr. Fordyce can you maybe tell us whether the
24 e-mail confirms the [*EUB] version or the Stein version I
25 think is what the court is looking for?

26 A. 248 is a suggestion to you, in other words from
27 McShane.

28 THE COURT: Well why don't you just read it.

1 MR. FORDYCE: Okay sure you've got it.

2 THE COURT: Or read it?

3 A. Mr. Fordyce would you like to just start with 247
4 and read all three of them.

5 THE COURT: No I asked him to read 249.

6 MR. FORDYCE: Well 248 is what I have Your Honor
7 which is speaking directly.

8 THE COURT: Oh let me my clerk has --.

9 MR. FORDYCE: Oh very good I'm having trouble
10 finding 249 now.

11 THE COURT: Okay 249 [STHOEZ] [AOE] so Mr. Stein
12 from Jim McShane to blank Gabrielino-Tongva Tribe
13 authority.

14 MR. FORDYCE: And that looks --

15 THE COURT: I was the sole authorized signatory on
16 the account.

17 MR. FORDYCE: On September 29.

18 THE COURT: So it wasn't joint. Let's see. On
19 September 9th the council changed the authorized signature
20 by appointing Aronson as sole signatory. So you weren't
21 joint, you were sole?

22 A. Is that the same account?

23 THE COURT: Yeah, Wells Fargo bank?

24 A. There was two Wells Fargo accounts and one Union
25 Bank account.

26 MR. FORDYCE: And Your Honor identify also -- I'm
27 a little bit not sure about this because 248 looks like a
28 shorter version ever that and that's an e-mail from McShane

1 to Stein on September 19, 2006 that says Jonathan as a
2 rough draft letter regarding involve [STKPAOEPLT] bank
3 [STHAOEUPL] a chief executive officer and [TRAERBG] you are
4 herb of the Gabrielino-Tongva Tribal gaming authority which
5 I believe Sundays Luke the same text that Your Honor was
6 but this would suggest that Mr. McShane wrote it.

7 MS. IBARRA: So that's a September 9th right.

8 THE COURT: September 19th.

9 MS. IBARRA: September 19th as 1239 p.m..

10 MR. FORDYCE: But this appears to be Mr. McShane's
11 writing so I'm not 100 percent that Mr. McShane was 100
12 percent whose signatory on what, so think that's at
13 ambiguity.

14 MS. IBARRA: Which is exactly why we don't know
15 why if what is Mr. Stein so there's a lot of e-mails there
16 I'm looking at Mr. McShane's declaration that he submitted
17 and that's where these exhibits come from.

18 MR. FORDYCE: Yeah it's his writing, it's Mr.
19 McShane writing it's not Mr. Stein so I'm not convinced
20 [THREUZ] any testimony about whether Mr. McShane knew the
21 signatory relationships.

22 MS. IBARRA: So I don't know.

23 THE COURT: Okay.

24 MS. IBARRA: Did we ever use this one, I'm pretty
25 sure this is the one -- this attaches this letter from
26 Stein.

27 THE COURT: Well it says from McShane -- to Stein
28 from McShane I reviewed your draft letter of the banks and

1 offered a few modifications. I think you should take out
2 most of the material, the factual background does not add
3 anything, some of the statements particularly those that
4 are construed of accusations, they also create unnecessary
5 risk of liability on the part of GTGA and its chief
6 executive officer. Employing such advice the bank will A
7 of signatories may not have been done properly, B,
8 purported new signatories resigned and C, GTGA would like
9 to ensure no funds are withdrawn until a new signatory
10 appointed by valid GTGA resolution. The draft also stated
11 the tribal council has no authority to change the
12 signatories on the GTGA account or take any other action
13 affecting GTGA. This appears to overstate GTGA's position
14 vis-a-vis the tribal council.

15 MR. FORDYCE: Is that Mr. McShane or Mr. Stein?

16 THE COURT: I do not see anything in ordinance
17 06-01 establishing GTGA that changes this or that puts
18 authority over banking signatories in the hands of the GTGA
19 CEO.

20 MS. IBARRA: Your Honor just for clarify what
21 exhibit is that.

22 THE COURT: At this point I would not recommend
23 asking the banks to close any accounts but to remit funds
24 back to investors particularly review the acknowledgments
25 in these notice letters that there are issues regard [H-PG]
26 signatory authority [TPH-GD] a signature [TRAOER] [AOE]
27 trying appoint whether properly it says property has
28 resigned and represented that she, capital C HE would not

1 remove any funds?

2 A. So what is the --.

3 THE COURT: Exhibit 250?

4 A. The resignation, who resigned.

5 THE COURT: This was Jim McShane sending an e-mail
6 to you telling you not I think what's what she was
7 referring to?

8 A. Yeah.

9 THE COURT: Telling had you to not accepted the
10 letters and that was dated September 19th, 2006, exhibit
11 250?

12 A. I'm sorry can I.

13 THE COURT: Sure you can take a look?

14 A. Thanks so much. Just the part about Aronson
15 resigning because I don't think she ever did.

16 THE COURT: Right that was part -- I guess that
17 was part of the problem with the [PRO*EPLD] letter was that
18 Aronson hadn't resigned but it was being represent today
19 the bank that she had resigned as general counsel so I
20 guess trying to inferring or telling the bank that she had
21 no authority?

22 A. Sure, uh-huh. Good point.

23 Q. BY MR. FORDYCE: So Mr. Stein does that clarify in
24 your mind -- I'm not sure what the question was?

25 A. I don't remember either but --.

26 THE COURT: No I think the testimony was that
27 McShane been drafting the letters and that's what
28 ultimately was sent to the bank and Ms. Ibarra said no

1 McShane said done send the letters they are inaccurate and
2 then apparently the letters were sent anyway by Mr. Stein?

3 A. And the -- the date on the last 250.

4 THE COURT: Was September 19th I believe.

5 MR. FORDYCE: I think Your Honor said so, yes.

6 THE COURT: I can look at it just to make sure.

7 The letter, the e-mail on Tuesday, September 19th, 2006.

8 MR. FORDYCE: Okay be that [T-Z] it may be, Mr.
9 Stein had you did end up sending a letter to the bank,
10 Wells Fargo voicing your concerns is that correct?

11 A. Right, I had a conversation with Mr. McShane about
12 the e-mail, I think the e-mail is very accurate as saying
13 what his advice was and he told me that it was my call and
14 so I sent it to the bank with the idea that nothing would
15 be hurt by holding things up for a week or two while calmer
16 heads prevailed.

17 Q. And do you believe anything that you provided to
18 the bank was inaccurate and or untrue?

19 A. In retrospect now, 11 years later, it was
20 inaccurate for me to claim that I was still CEO of
21 Gabrielino tribal gaming authority. I believe now, after
22 11 years, that September 9t6h was the true resignation
23 date, much as Mr. McShane puts here. But that was not
24 clear 11 years ago as shown by his continued writing of the
25 first paragraph.

26 Q. Right we've just looked at that, that's where we
27 have that ambiguity of?

28 A. The intense to resign.

1 Q. Did not resign or --?

2 A. The intent to resign versus actual resignation,
3 right.

4 Q. Understood. Going back to 571, for lack of a
5 better term, was this a surprise?

6 A. Yeah.

7 MS. IBARRA: Objection.

8 THE COURT: Was what a surprise?

9 MR. FORDYCE: Getting the termination letter, the
10 October 3 letter?

11 A. Getting the October 3 letter was a yes was a
12 surprise yes.

13 Q. Why?

14 A. Although earlier I have had gotten an earlier
15 letter that was pretty negative already from Mr. McShane.

16 Q. And we've already seen the Sheppard Mullin
17 engagement letter?

18 A. Right.

19 Q. At 677?

20 A. Right.

21 Q. So let's move on to another couple of exhibits as
22 to what --?

23 A. Well did you want to cover the second paragraph
24 this one.

25 Q. Oh I thought we did. Oh maybe we didn't. Please
26 read the second paragraph, section concerning the
27 development agreement?

28 A. In addition under sections Five and 13 of the

1 development agreement made as of February 1, 2001 and
2 amended from time to time thereafter between the tribe and
3 Saint Monica development, development agreement, the tribal
4 council hereby gives you 30 written notice of termination
5 of the development agreement.

6 Q. What is your understanding of that paragraph?

7 A. Well that was the formal termination that either
8 party could give with or without cause. By 2006 both
9 parties are the right to terminate with or without cause.

10 Q. Did this termination trigger anything in the SMDC
11 agreement to your recollection?

12 A. Yeah under Section 4 of the SMDC agreement, four J
13 I think it is, it meant all sums were immediately due and
14 payable.

15 Q. Let's take a look at -- I would like you to point
16 the court in 569 where it actually says that?

17 A. Exhibit.

18 Q. 569?

19 A. Section 4?

20 Q. Yeah. It starts -- I think Section 4 actually
21 starts on page '04 '83?

22 A. It's four-point -- it's Section 4 I, not J and
23 it's on Page 48 six.

24 MS. IBARRA: Sorry what exhibit are we on.

25 MR. FORDYCE: We are on 569.

26 Q. BY MR. FORDYCE: So I. So is that --.

27 THE COURT: I don't have 569, what is 569.

28 MR. FORDYCE: That's the SMDC agreement?

1 A. That's the SMDC agreement.

2 THE COURT: Oh that's right, how could I forget
3 that.

4 MR. FORDYCE: So while let the court get to it.

5 THE COURT: That's all right.

6 MR. FORDYCE: So Mr. Stein --.

7 THE COURT: Are you following along plaintiff.

8 MS. IBARRA: Yes, I am.

9 MR. FORDYCE: Mr. Stein I'm just going to have you
10 read I because it's pretty crate **[KALT]** here?

11 A. So this is the developer agreement exhibit 569
12 Section 4 I monthly amounts and 10 percent incentive due in
13 case of termination. In the event this agreement is
14 terminated for any reason other than by developer, the
15 **[TOEPBG]** **[SRA]** shall be required to pay to developer
16 compensation equal to all monthly amounts for each month
17 prior to and including the month in which the termination
18 becomes effective which compensation shall-g due and
19 payable upon the effective date of termination.

20 Q. And that was triggered by Mr. McShane's October
21 3rd letter terminating SMDC correct?

22 A. That's correct.

23 Q. So on October 3 that was 30 days and he says -- so
24 either October 3 or November 3 they would oh me all the
25 monthly amounts.

26 Q. Okay. And is there ambiguity as you read this
27 letter on or around October 3rd, 2006 that you were being
28 terminated and that SMDC was not effecting the termination?

1 A. That -- no, no ambiguity at all. The tribe was
2 firing SMDC.

3 Q. As you sit here today has anything changed that
4 belief?

5 A. No.

6 Q. And then the next paragraph, what was going on
7 there starting we we request?

8 A. And what exhibit are we at now.

9 Q. We're back to 57 one.

10 THE COURT: That's the last little area because I
11 have to go.

12 MR. FORDYCE: Yes Your Honor this will probably
13 time perfectly, we'll just finish out this letter and then
14 I have a group of three exhibits and we can do that
15 tomorrow?

16 A. 57 one.

17 Q. Yes the third paragraph?

18 A. It will be ham handed. We continued the request
19 is that --.

20 Q. We request your cooperation?

21 A. We request your cooperation asserting -- in
22 assuring an ordinarily transition of the files, tribal
23 council, GTGA and any -- all of their instrument [TAL]
24 [TAOEZ] when we spoke this morning we asked to you turnover
25 all files to the tribal council and now we [R*E] iterate
26 that request in writing, we will arrange for the pick up of
27 the files as soon as possible.

28 Q. Did this take place?

1 A. No.

2 Q. Why not?

3 A. Two reasons, the tribal council had already
4 removed all the key files, several copies of all the
5 council resolutions that were the official acts of the
6 tribe.

7 MS. IBARRA: Misstates testimony?

8 A. Contract notebooks.

9 THE COURT: All right when was the actual removal.

10 Q. BY MR. FORDYCE: Do you recall Mr. Stein?

11 A. September 9th after the big blowup.

12 MS. IBARRA: Okay we've heard testimony --?

13 A. And they walked out with the white notebooks.

14 THE COURT: They walk out on the day of the
15 blowup?

16 A. Yes and I actually left -- I actually left the
17 office, I was dead tired and I said do what you want, I had
18 written my resignation letter and I said I'm just tired I'm
19 going to bed so I left them in the office so they had the
20 rest of the night to go back and forth and ferry any
21 notebooks they wanted out and they took all the
22 resolutions -- three copies of all the resolutions, they
23 took the contract notebook.

24 THE COURT: That was their offices right.

25 A. Yes.

26 THE COURT: So they took from their offices, their
27 files.

28 A. Right.

1 MR. FORDYCE: And I think we've had Ms. Carmelo,
2 Mr. Dunlap, Ms. Garcia.

3 THE COURT: Well, they all testified they took it.
4 I was just questioning when it happened.

5 MS. IBARRA: They took some documents, not all.
6 They took the checkbooks and they took the tribal -- one
7 copy of the tribal council resolutions but not others and
8 then during the attachment all these documents went back,
9 but that happens later in this letter.

10 MR. FORDYCE: So Mr. Stein anything to change your
11 testimony that you just gave?

12 A. No.

13 Q. Last paragraph on the first page is 571, please?

14 A. We also request that you refrain from disparaging
15 the tribe, the tribal council and GTGA throughout and after
16 this period of transition. The tribe, tribal council, and
17 GTGA will provide reciprocal courtesy to you and SMDC.

18 Q. What was your understanding of that?

19 A. The understanding was that they were asking for a
20 courtesy. I did not extend that courtesy and the tribal
21 council did not extend SMDC from that courtesy from October
22 3 forward we were saying terrible things about each other
23 to anybody who would listen, both sides.

24 Q. Okay and then just finally that last paragraph so
25 we can get the court on her way?

26 A. We at any time the request as set forth in the
27 tribal council September 29, 2006 letter to you that our
28 continued communications remain civil and neutral as we

1 seek to resolve any outstanding issues, we look forward to
2 discussing mutual lie satisfaction resolution with you
3 and/or your counsel.

4 Q. Did this take place?

5 A. Not our side it did, Seyfarth Shaw sent several
6 letters saying let's mediate, let's keep this private,
7 [HETS] let's not have a public lawsuit, let's solve the
8 problem and unfortunately Mr. McShane's own clients were
9 the ones that said shall and Mr. McShane said nope we're
10 just going to have file a lawsuit instead.

11 THE COURT: Is that what they meant by let's make
12 our communications remain civil, not file lawsuits?

13 A. The last sentence we look forward to discussing a
14 mutual [AOE] satisfaction resolution with you and your
15 counsel.

16 THE COURT: I mean why would they have to -- what
17 was happening such that they'd have to tell -- [TH*EUL]
18 they'd have to say our continued communications remain
19 civil and neutral?

20 A. Because the tribal council was screaming at them
21 and I was screaming at the tribal council.

22 MR. FORDYCE: And Your Honor we can pick up
23 tomorrow with exactly what Mr. Stein just referenced.

24 THE COURT: All right tomorrow then, same time.

25 MR. FORDYCE: Sounds good.

26 THE COURT: Okay thank you.

27 MR. FORDYCE: Thank you Your Honor. 11:55 AM.
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