

1 CAUTIONS IN USING A REALTIME PARTIALLY EDITED TRANSCRIPT

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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.

20 GABRIELINO-TONGVA TRIBE VS. STEIN, TRIAL DAY 29

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1 GABRIELINO-TONGVA TRIBE VS. STEIN, TRIAL DAY 29

2 ROUGH TRIAL TESTIMONY OF RAE LAMOTHE

3 10:04 AM

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

6 MS. IBARRA: Good morning.

7 MR. FORDYCE: Good morning.

8 THE COURT: Counsel make your appearance.

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

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

14 MR. STEIN: And Jonathan Stein on behalf of SMDC  
15 and the Crane Group.

16 THE COURT: Thank you you may be seated.

17 MR. STEIN: We had a little bit of business if  
18 there's time to do it.

19 THE COURT: Okay.

20 MR. STEIN: If we can.

21 THE COURT: Yes there's time, you can do that if  
22 you'd like, you can be [STAET]-d if you want, you can stand  
23 but --.

24 MR. STEIN: Long car ride in.

25 THE COURT: All right.

26 MR. STEIN: So we gave you the 402 motion with the  
27 exhibits in here and then we served it -- we were supposed  
28 to serve it Friday afternoon, we served it Sunday morning

1 before noon.

2 THE COURT: Yes, I have it.

3 MR. STEIN: So we've had Sunday all day, Monday  
4 all day, Tuesday all day and now it's Wednesday.

5 THE COURT: Okay.

6 MR. STEIN: It would seem that we should perhaps  
7 set a date for response because we -- Ms. Lamothe will be  
8 here today and very likely tomorrow since we're basically  
9 redoing her testimony, so that's today and tomorrow, that's  
10 Wednesday Thursday. Then on Friday I would begin again to  
11 do the 776 work and that may be one day at most too. Bill  
12 mills is available starting on Monday, he was available but  
13 I told him how things were going so he gave away Friday so  
14 he'd be available Monday Tuesday Wednesday if that is to  
15 the preference to the court and the parties. So I thought  
16 we should bring these up now to just talk about them a  
17 little bit.

18 THE COURT: Okay. So I'm not sure what the deal  
19 was with the 402, I thought you sort of worked that out  
20 [PWAUDZ] there was a late filing, there was additional time  
21 added but.

22 MS. IBARRA: Yeah.

23 THE COURT: To the opposition but I'm not sure  
24 where that left you.

25 MS. IBARRA: Right so originally I was going to  
26 file my response on Monday but that was assuming that I had  
27 the weekend to work on so I don't.

28 THE COURT: Right.

1 MS. IBARRA: So now it's the workweek and I have  
2 trial in the morning and then preparing for trial and then  
3 you know just regular work so mean I will do my best to  
4 file it on Friday and since we're doing -- you're saying  
5 that we're doing Ms. Lamothe tomorrow as well and then we  
6 had another day of Mr. Stein's testimony, that far seems  
7 like that will take us through the week and then we can do  
8 Mr. Mills and then we can return to whatever issue -- the  
9 quantum meruit issue if the court decides if that's what  
10 we're going to do, that seems orderly.

11 THE COURT: I guess the point just is that the  
12 [KO\*ERD] court will remain flexible if for example your  
13 testimony ends with you the quantum meruit is still  
14 outstanding for whatever reason, we could recall you if the  
15 court says you know I want to hear about that and then you  
16 can testify to it. I will remain flexible in that regard,  
17 so I wouldn't worry too much about whether the filings will  
18 prevent you from testifying, that will not happen.

19 MR. STEIN: That [WO\*B] would be great.

20 THE COURT: That will not happen.

21 MR. STEIN: So Friday.

22 MS. IBARRA: Yes.

23 MR. STEIN: Would you be filing it with the court  
24 and then E serving you.

25 MS. IBARRA: I will serve it on you on Friday  
26 evening, I don't know that I would be filing it with the  
27 court until Monday so we were going to be in court in the  
28 morning so.

1 MR. STEIN: So is it [TPWRAOEU] or Monday.

2 THE COURT: But why would you serve it on him or  
3 not on me on Friday, or give it to me.

4 MS. IBARRA: I don't think I'm going to have a  
5 chance to work [T\*] on it until Friday in the afternoon.

6 THE COURT: Okay but you could still get it here  
7 with delivery, right.

8 MR. STEIN: In other words if you were supposed to  
9 get something Friday and then Monday file if in the court,  
10 you lost the weekend but now it's been Monday Tuesday  
11 Wednesday Thursday and Friday, I just wondered if it will  
12 be filed.

13 MS. IBARRA: I have other filings for other cases  
14 and then I have trial so it's hard.

15 THE COURT: Well Ms. Ibarra trial takes precedence  
16 over whatever else you may have so you -- granted you  
17 should serve the Defendant on Friday but also the court  
18 needs the documents as well, so if you can you know lodge  
19 it with the court or file it -- did you file this? No it's  
20 received. Okay. By the end of the day on Friday, that's  
21 fine but the day you give it to Mr. Stein you should also  
22 be providing it to the court.

23 MS. IBARRA: Okay but he didn't --.

24 THE COURT: I mean presume belief [its|it's] done  
25 the same day, right.

26 MS. IBARRA: Yeah but he didn't serve me on the  
27 same day that he filed it either because sometimes you  
28 don't.

1 MR. STEIN: We served had you before.

2 MS. IBARRA: Yeah you served him before so that's  
3 what I'm sort ever --.

4 THE COURT: Okay fine if that's what happened,  
5 then fine, do it that way then.

6 MR. STEIN: So Friday E service.

7 MS. IBARRA: Yes probably late after I finish my  
8 other filing I will finish this, get it to you.

9 MR. STEIN: And Monday morning before court  
10 filing.

11 MS. IBARRA: Yes filing it with the court.

12 THE COURT: Okay so you do have a plan, you do  
13 kind of know what you're doing. All right.

14 MS. IBARRA: Thank you.

15 MR. STEIN: That's point one. Point two, we're  
16 trying to nail down the difficulty with this trial  
17 preference motion, it's a February 2nd hearing date, we've  
18 gone -- my co-counsel has gone in ex parte on the other  
19 matter, we have depositions scheduled for February 1 two  
20 three four, fourth being Saturday up in [SALS] lead oh on  
21 this \* \* the other side has not said whether they're going  
22 to show up or not, I just want to give a heads up. And the  
23 depositions have to be -- were supposed to be taken prior  
24 to the February 2 hearing date because they impact as to  
25 whether there is in fact you know a substantial doubt of  
26 survival in six months, that's the section 36 motion.

27 THE COURT: Right.

28 MR. STEIN: Trial purpose, very strict standard,

1 very unpleasant subject matter. So we already had a  
2 deposition on January 23rd that co-counsel handled would  
3 you tell me. Soy just wanted to give the court a heads up  
4 in case I can't be here and I wanted to see what could be  
5 done in terms of the schedule.

6 THE COURT: Well I mean it sounds like what you  
7 should do is schedule your depositions in the afternoon.  
8 Are they all held in [SALS] lady.

9 MR. STEIN: Well this is the difficulty is, one of  
10 the depositions is of the person who everybody [TKPWRAOEDZ]  
11 is terminally ill, the question is is that five years, is  
12 that Five months.

13 THE COURT: Right.

14 MR. STEIN: So there's a question as to that.  
15 We -- they have volunteered to come down to Los Angeles, an  
16 earlier date that that could have worked and we'll keep  
17 that in mind, I just want to rates the issue to the court,  
18 not for a final fixing out but --.

19 THE COURT: That's fine just let me know, but like  
20 I said, we're only doing two hours a day so there should be  
21 a way to kind of get your deposition [do not|done] and  
22 still be here in court for trial. Soy want you to work on  
23 that but thank you for letting me know what your schedule  
24 is.

25 MR. STEIN: And I've accomplished my exact purpose  
26 which is to get a suggestion for the Court that I can then  
27 say hey can I do then, can we do that.

28 THE COURT: Okay.

1 MR. STEIN: We'll try depositions starting in the  
2 afternoon here in Los Angeles and we'll also find out the  
3 results of the ex parte tomorrow.

4 THE COURT: What is the ex parte again, I can't  
5 remember.

6 MR. STEIN: The ex parte is to move the February 2  
7 trial -- hearing date which would allow the depositions  
8 would be spaced in a man [THAER] might allow them for  
9 example to be take not down here.

10 THE COURT: Okay. Thank you. Anything else? No  
11 is Ms. Lamothe here.

12 MR. FORDYCE: She is Your Honor, she's outside.

13 THE COURT: All right. Well whoever's witness it  
14 is needs to get her.

15 MR. FORDYCE: Oh I'm sorry I can address it.

16 THE COURT: Well actually Ms. Ibarra you called  
17 her so technically you could go out and get her but that's  
18 fine.

19 MS. IBARRA: She's per pursuant to subpoena and  
20 I'm doing cross so technically --.

21 THE COURT: Well you called [T\*] her and this is  
22 776 isn't it.

23 MS. IBARRA: No it was their subpoena and I'm just  
24 doing cross from their subpoena.

25 MR. STEIN: But she's your witness she's on your  
26 list.

27 MS. IBARRA: She was on both of our lists.

28 THE COURT: It doesn't mat [STPHAOER] but it's



1 pursuant to your subpoena.

2 THE COURT: So let's just bring her in you both  
3 want her.

4 THE COURT: Okay Ms. Lamothe?

5 A. Is tea okay.

6 THE COURT: Yes fine fine fine, you can have  
7 whatever you want. Okay Ms. Lamothe you under you're still  
8 under oath.

9 A. Yes.

10 THE COURT: Okay thank you.

11 Q. BY MS. IBARRA: Okay Ms. Lamothe we were talking  
12 about exhibit 569 which is the SMDC agreement?

13 A. Yes.

14 Q. So let me -- let's pull it out again so we can  
15 review it. It's this one, it's the white one. So 569 is  
16 the SMDC agreement?

17 A. Dated February 1 of 2001 because I think  
18 there's --

19 Q. So that preceeds you, correct?

20 A. Yes.

21 Q. But did you treat it as a business document that  
22 belonged to the tribe when you were general counsel.

23 MR. STEIN: Objection vague.

24 MR. FORDYCE: Join.

25 THE COURT: Overruled?

26 A. There would have been a copy in the tribal files  
27 at the tribal office and I may or may not have kept a  
28 duplicate at my office.

1 Q. Okay. But you don't recall right now if you kept  
2 one in your own offices?

3 A. When I was -- I don't that thing do I.

4 THE COURT: I can hear you.

5 A. It was relevant when I was using I probably would  
6 have had a duplicate. I may or may not have kept it after  
7 that.

8 MS. IBARRA: Okay.

9 Q. BY MS. IBARRA: Did you think that it was your  
10 duty to make sure that it was a [TKPHRAOET] and accurate  
11 document?

12 A. I assume I would have looked when I got it for  
13 whatever purpose I initially got it I would have checked to  
14 make sure I had all the pages, I don't know that I would  
15 have gone back and reviewed -- done the Monday morning  
16 quarterback as to what had happened before I arrived.

17 Q. I see. So did you review to make sure that all  
18 the provisions were -- were in compliance with all the  
19 necessary regulations.

20 THE COURT: You're a little vague. What  
21 regulations.

22 MS. IBARRA: Well for example maybe I should be  
23 more specific about it.

24 Q. Okay. So did you review it to see if it would be  
25 enforceable under the national Indian tribe gaming  
26 regulation if the tribe ever received federal recognition?

27 A. When I first started, likely not because I had not  
28 worked with an Indian tribe previously so anything that I

1 learned about Indian gaming was on the job learning and  
2 research. At some point there were amendments and the one  
3 that we looked at yesterday took into account that  
4 management rule but when I started, at some point I would  
5 have reviewed this but I don't recall when.

6 Q. So yesterday we reviewed Exhibit 16 which was that  
7 letter from Mr. Steve Otto?

8 A. Yes.

9 Q. And -- did you say you've never seen that before.

10 THE COURT: Can I ask a question, how is it that  
11 you were retained by the tribe, did the tribe approach you  
12 or how -- in other words how did you become employed?

13 A. Mr. Stein referred me to the tribe.

14 THE COURT: Oh okay?

15 A. We knew each other through the Saint Monica bar  
16 association.

17 THE COURT: Oh I think I remember that testimony.  
18 So he referred do you have the tribal council I guess.

19 A. Correct.

20 MS. IBARRA:

21 Q. So we have reviewed the Otto letter and you said  
22 had you never seen that before?

23 A. I said I don't recall seeing it, if I did it  
24 didn't ring a bell that I saw it.

25 Q. If if you have had seen it would you make sure  
26 that of the provisions that references the SMDC agreement  
27 correctly reference the events in that letter.

28 MR. FORDYCE: Objection lacks foundation.

1 MR. STEIN: Objection, incomplete hypothetical.

2 MR. FORDYCE: Join.

3 THE COURT: Overruled on that ground why don't you  
4 be clear about the resolution.

5 MS. IBARRA: So let's look at the resolutions  
6 attached to the SMDC agreement. So the first resolution  
7 attached to this document which we've actually called  
8 resolution -- Exhibit 15 49.

9 MR. FORDYCE: 42.

10 MS. IBARRA: 1542 okay that's right I'm looking at  
11 it upside down, is resolution Number 10. Are you familiar  
12 with this document?

13 A. Let me see.

14 Q. Sure.

15 A. Generally yes but it predated me, I would have  
16 reviewed it to do future documents but this predated me.

17 Q. So let me ask you a again then about it because it  
18 references Mr. Otto. And page 34 of the resolutions the  
19 last whereas in resolution Number 10, can you read that?

20 A. Whereas, the council little A received a draft of  
21 the development agreement and this resolution for each  
22 counsel member in its early December 2000 from Mr. Stein;  
23 little paren little double I, met with Mr. Stein for  
24 several hours on or about January 14, 2001 to review and  
25 make changes to the terms and conditions of the draft  
26 development agreement in this resolution [S\*BGS] paren  
27 little three I, met on its own photographer several hours  
28 [ORB] January 26 [#\*] 27, 2001 to discuss the term and

1 conditions of the draft development agreement and this  
2 resolution; paren little I [SKR-FPLT] met a second time  
3 with Mr. Stein for several hours on February 11, 2001 to  
4 review a new draft of the development agreement which  
5 incorporated previous changes, and to make further hole  
6 punch but I believe it says changes, to the terms and  
7 conditions of the hole punch development agreement and this  
8 resolution [S\*BGZ], parent little V, tribal general counsel  
9 Otto received from Mr. Stein reviewed a draft and  
10 development agreement and this resolution, ; little VI met  
11 with tribal general counsel for several hours on February  
12 25th 2001 to review [TEPB] the interprets and conditions of  
13 the development agreement and this resolution, and to seek  
14 his advice; and paren little V double little I are meeting  
15 today, March 4, 2001 to give final consideration to, and  
16 adopt the development agreement in this resolution as the  
17 valid, binding and [A\*F] [ABL] obligation of the tribe,  
18 effective immediately.

19 Q. So if had you had seen the letter that we  
20 discussed yesterday from Mr. Otto saying that he hadn't  
21 reviewed it, would you think that this would be an accurate  
22 and complete document, recitation of the events.

23 MR. FORDYCE: Incomplete hypothetical lacks  
24 foundation calls for speculation.

25 MR. STEIN: Objection she's already said she  
26 didn't know anything about Mr. Otto.

27 THE COURT: No overruled. Overruled.

28 Q. BY MS. IBARRA: My question is if she knew about

1 it what would she have done about this paragraph that was  
2 contained in the tribes documents?

3 A. I'd have to will you please Mr. Otto's letter and  
4 this so I would see what items he's saying he did or did  
5 not do.

6 Q. Okay do you want to do that?

7 A. Yeah that would be easier.

8 Q. I have that right here so it's -- right here, it  
9 should be this one and it's 16 and yesterday we concluded  
10 that it was missing the second page?

11 A. Right.

12 Q. We had discussed it so I got you -- and I got the  
13 court -- Neli can we hand this to the court as well?

14 THE CLERK: Yes.

15 MS. IBARRA: This is her copy.

16 THE COURT: Do you have a copy resolution 10 I  
17 know I have it.

18 MS. IBARRA: Resolution 10 is attached to -- yeah  
19 it's attached to 569.

20 THE COURT: Yes one version of 569 but okay that's  
21 fine.

22 MS. IBARRA: Yeah that's the only version I think  
23 we have is the one that's attached to it [WREUS] now  
24 document 1542, Exhibit 154 two.

25 THE COURT: I have that copy?

26 A. Do you want me to swap this out in the exhibit  
27 binder.

28 THE COURT: Which has the first two pages, right?

1 A. Yes.

2 THE COURT: Yes why don't do you that?

3 A. And it is hole punched.

4 A. Yes but the exhibit binder doesn't have the  
5 handwriting Exhibit 17, I don't know that it matters.

6 THE COURT: Where?

7 A. Down here.

8 THE COURT: That says Exhibit 17? .

9 MS. IBARRA: Oh yeah it just says Exhibit 17 it's  
10 actually Exhibit 16.

11 THE COURT: Someone marked it, that's okay. Thank  
12 you now we have a complete copy.

13 Q. BY MS. IBARRA: So this is a copy Exhibit 154 two  
14 which is resolution Number 10 Your Honor if you want to  
15 look at this version, it's -- did you want to look at this.

16 THE COURT: Sure.

17 MS. IBARRA: Resolution Number 10.

18 THE COURT: Yes.

19 MS. IBARRA: Okay Neli can you --

20 THE CLERK: Yes (Indicating.).

21 THE COURT: Thank you. . Why don't you ask her  
22 the questions, lead her rather than have her read it.

23 MS. IBARRA: Okay.

24 Q. BY MS. IBARRA: So do you think that -- do you  
25 think that if you knew of the existence of the Steve Otto  
26 letter that the resolution contained a complete and  
27 accurate recitation of what occurred when it agreement was  
28 entered into?

1           A.    The resolution indicates the tribe had met with  
2 Mr. Otto and Mr. Otto's letter was contrary so there was a  
3 conflict between the two.

4           Q.    So if you'd known about it you likely would  
5 have -- would you have corrected the resolution if you had  
6 known about this letter?

7           A.    I assume so, yes.

8           Q.    But you don't recall if you knew about it at this  
9 point?

10          A.    I don't recall, no. It doesn't look familiar but  
11 it was more than 15 years ago.

12          Q.    Let's move on and can we look at the compensation  
13 provisions of the SMDC agreement so it's still the same  
14 1569?

15          A.    Okay.

16          Q.    If you can look at pages six through seven,  
17 Section 4, compensation. I think we're going to be done  
18 with this binder so I'll just get this out of your way?

19          A.    Okay.

20                THE COURT: We're looking at the SMDC agreement  
21 now.

22                MS. IBARRA: Yes so it's 1569 pages six through  
23 seven, Number 4, compensation?

24          A.    Okay.

25          Q.    BY MS. IBARRA: Just to be clear, have you -- do  
26 you recall doing any research about this section  
27 specifically and seeing whether it violated any federal  
28 regulations with regards to any federally recognized



1 tribes?

2 A. I don't recall doing any research of that  
3 nature.

4 Q. Do you recall that issue ever coming up.

5 MR. STEIN: What section again.

6 MR. FORDYCE: Here (Indicating.).

7 MS. IBARRA: Pages six through seven, Number 4,  
8 compensation and then it goes on until Page 7?

9 A. I don't recall that issue ever coming up, no.

10 Q. And do you recall doing any research on any other  
11 sections of the SMDC agreement.

12 THE COURT: I guess the question would be did you  
13 do any research at all in connection with the SMDC  
14 agreement.

15 MS. IBARRA: That's a better restatement of my  
16 question.

17 THE COURT: Well just -- you can start with that  
18 general question.

19 MS. IBARRA: That's where I was going?

20 A. I don't recall. I likely would have done some  
21 research on various corporate provisions but at this point  
22 I don't recall what I would have researched. I have  
23 primarily a litigation practice so if there were  
24 transactional questions I researched -- did some research.

25 Q. BY LEFT1: Are you familiar with rule 3:30 of the  
26 rules of professional responsibility?

27 A. Yes.

28 Q. Can you describe it just generally, not

1 specifically but your general understanding what it does?

2 A. It has multiple parts, the -- what it's most often  
3 cited for is if an attorney has a preexisting client and  
4 entered into a business relationship \* \* with that client,  
5 the client needs to be given the opportunity to obtain  
6 outside counsel to independently review it.

7 Q. Did you -- did that worry you have at all with  
8 regards to Mr. Stein and his relationship with the tribe?

9 A. No.

10 Q. Why is that?

11 A. ?

12 A. My understanding was -- well once I arrived the  
13 tribe had counsel and my understanding was most of the time  
14 previously they had counsel, there were a series of  
15 different people but one person would leave and someone  
16 else would arrive.

17 Q. And one of them being Mr. Otto?

18 A. Yes. The one person I'm certain of is Hugh  
19 McMullin because I know him but I know there were other  
20 people as well and there's the letter from Mr. Otto, I  
21 can't visual aisle eyes him, I don't know if I ever met  
22 him, doesn't --.

23 Q. Okay. Did you have a retainer agreement with the  
24 tribe?

25 A. I did.

26 Q. You did?

27 A. Yes.

28 Q. Do you have a copy of it still?

1 A. I may. I don't have it with me.

2 Q. Right. Do you recall what your -- what the  
3 compensation provision was for the retainer agreement?

4 A. There was -- I was going to defer my -- I was  
5 going to get a monthly amount and that was going to be  
6 deferred until there was a casino -- or gaming revenues and  
7 I would get a percentage of the slot [TKHRO\*ES] gross or  
8 the slot profit, some percentage of -- from the slot  
9 machines.

10 Q. So was that similar to this provision from Mr.  
11 Stein where he also got a percentage of the slot gross?

12 A. Yes.

13 Q. It was similar to that?

14 A. Similar provision, lesser amounts.

15 Q. Okay. So to your understanding, do you still --  
16 because that's in the future?

17 A. Correct.

18 Q. So to your understanding is that still valid or  
19 no, or did you settle that when you -- when you took the  
20 lump sum?

21 A. When I left, I got a lump sum and a reduced  
22 percentage so that there was money to fund my replacement.  
23 There had to be something to offer the new person.

24 Q. Can you explain that further, I'm not sure I  
25 understand what you mean?

26 A. Well if each time the tribe hired counsel they  
27 gave them I mine was one percent, if they kept giving  
28 people one percent one percent one percent, at some there

1 would be little left neither tribe, so I reduced my  
2 percentage and then I believe the difference was given to  
3 my replacement.

4 Q. So would that be Ms. Liz Aaron?

5 A. Either Liz and/or Marilyn Barrett, I don't know, I  
6 believe Ms. Barrett's firm wanted an hourly fee but I'm not  
7 sure.

8 Q. I think she said she had did contingency?

9 A. Okay.

10 Q. She didn't testify to getting a percentage.

11 MR. STEIN: Objection is this a question pending  
12 or she's giving --.

13 MS. IBARRA: Well this is actually interesting  
14 because this --

15 Q. Do you think that taking a percentage in future  
16 revenue from your client, I don't think that would have  
17 triggered 3:30 for you?

18 A. No because the exception to 3:30 is at the  
19 beginning of a relationship you can take a contingency.

20 Q. And you -- because you didn't have a preexisting  
21 business relationship with them?

22 A. Correct.

23 Q. I see. Okay. So -- all right. So to your  
24 knowledge, did they have independent counsel anyway when  
25 you end entered into the retainer agreement with them.

26 THE COURT: When she entered into it.

27 MS. IBARRA: Yes it's just a general question?

28 A. When I started, I believe my predecessor reviewed

1 it, but I am not certain.

2 Q. Who would the predecessor have been?

3 A. Either Mr. Mac or the unnamed gentleman that I met  
4 with him \* \* Mr. McMullin \* \*. I believe my predecessor  
5 did but I am not certain.

6 THE COURT: You think your predecessor reviewed  
7 your --?

8 A. Right, as part of the hand off but I'm not --.

9 THE COURT: Why did you believe that, on what  
10 basis did you believe that?

11 A. Because I believe there was some slight overlap.

12 THE COURT: No but I mean what would lead you to  
13 believe that, did he tell you he was reviewing it, did  
14 somebody else tell you they were reviewing it, did you get  
15 a fax from them, I mean on what basis do you think that  
16 prior counsel reviewed that document, your retainer or did  
17 you provide it to him?

18 A. I don't recall providing it to him, I just have a  
19 general recollection that there was some discussion with  
20 the -- with Mr. Stein, with the council saying if so and so  
21 is going to leave, then we'll have to get someone new and  
22 that -- I just remember a general discussion of it but I  
23 don't remember any of the specifics as to --.

24 THE COURT: So you think there was some general  
25 discussion with the tribe and Mr. Stein?

26 A. I believe --.

27 THE COURT: That the prior attorney was going to  
28 review it?

1           A.     That there was some discussion that if Mr.  
2 McMullin was leaving, someone else would have to come in  
3 and that would be part of the ending duties but that's --  
4 it's just a vague recollection from subsequent  
5 discussion -- you know tribal meetings and talking to  
6 people and what have you.

7           THE COURT:   So you don't really know you're just  
8 saying you know I have this vague --?

9           A.     It's a -- a vague recollection is the best way to  
10 describe it.

11          THE COURT:   With no understanding as to who would  
12 have told you that or how you would have --?

13          A.     It would have been mentioned likely at a tribal  
14 council meeting just with everybody there with you know who  
15 I was replacing, what was happening and what have you  
16 but --.

17          THE COURT:   Okay?

18          A.     But I couldn't be any more specific than that.

19          MS. IBARRA:   Your Honor I have an unsigned copy of  
20 the retainer agreement with Ms. Lamothe, I don't know if  
21 it's the right one or the correct one, this is the only  
22 thing that my client had.  It was produced with thousands  
23 of documents.

24          THE COURT:   I don't need the --.

25          MS. IBARRA:   You have don't need it.

26          THE COURT:   No, I don't need your explanation.

27          MS. IBARRA:   Can I show it to her.

28          THE COURT:   You're not testifying.  Just show her

1 the document and we don't need [ET] preamble.

2 MS. IBARRA: I'll show it to counsel.

3 THE COURT: Just show her the document.

4 MS. IBARRA: Well the reason I'm explaining is  
5 it's not on my exhibit list.

6 MR. STEIN: Well it will be now if you're showing  
7 it to her \* \* that is the [TKOERT] \* \*.

8 MS. IBARRA: Yes.

9 THE COURT: Our next in order [TPHEL] oh.

10 THE CLERK: For plaintiff.

11 THE COURT: For plaintiff.

12 THE CLERK: It's exhibit 250 Your Honor.

13 THE COURT: 250, Ms. Lamothe retain her. Do you  
14 have a copy for me. Thank you Neli.

15 THE CLERK: You're welcome.

16 MR. STEIN: This document seems to have been --.

17 THE COURT: What is your objection.

18 MR. STEIN: It seems to have been altered zero  
19 graphically because it has footers and dates that are not  
20 consistent with the original date.

21 THE COURT: Well it accepts -- the date says --.

22 MR. STEIN: So it seems like somebody superimposed  
23 one document or another, whether it's counsel or otherwise.

24 MS. IBARRA: I --.

25 MR. STEIN: And it says final submit today council  
26 January 27th, 2002, that's the date of resolution 37.

27 THE COURT: And it's dated January 27th, 2002.

28 MR. STEIN: No it's dated May 1, 2001.

1 THE COURT: Well no if you look at the signature  
2 line Rae Lamothe January 27, 2002 which is consistent with  
3 the footer.

4 MR. STEIN: It says approved as to form and  
5 content independent counsel Ed Hamburger, the last page.

6 MS. IBARRA: This is what I have.

7 THE COURT: That also -- there's a line for that  
8 dated January 27th, there's also a line for tribal council  
9 member, it's all unsigned but.

10 {LEFT1}: Yeah it's all unsigned, I don't --.

11 THE COURT: But anyway, okay.

12 MR. STEIN: And then on Page 15 it says.

13 THE COURT: So what is the objection. What is  
14 your objection.

15 MR. STEIN: I think my objection has been  
16 explained by the court's points, I think you've explained  
17 what I was concerned about.

18 THE COURT: Okay well let's see what -- all right.  
19 .

20 MR. STEIN: What exhibit number is this.

21 MR. FORDYCE: It's 250.

22 MS. IBARRA: 250.

23 MR. STEIN: And this was not on the exhibit list.

24 MS. IBARRA: No it wasn't.

25 THE COURT: No it's being [APD]-d.

26 MR. STEIN: And forgive me if I can just stop a  
27 moment and it's okay to -- she can bring in a new exhibit.

28 THE COURT: Sure.



1 MS. IBARRA: Well Mr. Stein you also brought some  
2 new exhibits, supplemental list.

3 MR. STEIN: As long as it's a two [WAOEU] street  
4 that's all.

5 THE COURT: That's right it was a two way street.  
6 So what's your question.

7 Q. BY MS. IBARRA: So Ms. Lamothe do you recall this?

8 A. Generally, yes.

9 Q. Do you recall if it was ever executed?

10 A. Yes.

11 Q. You think it was?

12 A. A retainer agreement was executed, yes.

13 Q. And do you recall that it was in 2002?

14 A. My recollection.

15 Q. Yeah.

16 A. My recollection is that it would have been sooner  
17 but it may have been.

18 Q. Well there are a couple --.

19 THE COURT: Let her finish.

20 MS. IBARRA: Oh [SAOR] [AOE].

21 THE COURT: You believe it would have been sooner  
22 than January 27th, 2002?

23 A. In light of the fact that I started doing work in  
24 May of '01, I would have -- I would have thought that I  
25 would have had a retainer agreement sooner but I don't have  
26 a recollection of when it was signed.

27 Q. BY MS. IBARRA: So there's a couple of  
28 discrepancies with this document, one of them is it's dated

1 as of May 1, 2001 but then the execution date even though  
2 it's not executed, was 2002 so do you think it might have  
3 been back date today like your start day.

4 THE COURT: What's back dated? You have two  
5 different dates, so are you talking about the signature  
6 line or are you talking about the first page.

7 MS. IBARRA: Well the first page?

8 A. Could you re-read -- could you restate the  
9 question or re-read it.

10 Q. Yeah so I'm wondering and I don't know I'm asking  
11 you, that maybe because the execution date and the  
12 signature pages is in 2002 as of January but then the first  
13 page seems to refer to 2001, if you negotiated back to your  
14 start date or something like that?

15 A. I would have started doing some work for the tribe  
16 as of May 1, that's -- that would be why that date was  
17 there and then at some point there was obviously some  
18 discussion with them about signing a retainer agreement. I  
19 don't -- I don't recall if this was the next meeting they  
20 had or what -- what happened in the interim.

21 THE COURT: So just so I understand this, you  
22 started working for the tribe without a retainer  
23 agreement.

24 A. Yes.

25 THE COURT: Okay. And what were the terms of that  
26 agreement?

27 A. Generally the terms here is what I had discussed  
28 with Mr. Stein but I was willing to do some amount of work

1 to get started you know on immediate tasks that needed to  
2 be done.

3 THE COURT: Okay so you worked from 2001, May,  
4 until January 2002 without pay under the same conditions  
5 basically?

6 A. Correct. I knew under any version I wasn't  
7 getting paid immediately so.

8 THE COURT: Okay.

9 MS. IBARRA: So -- yes.

10 Q. So I don't have an executed copy of this retainer  
11 agreement so I don't know and I don't know if you know if  
12 this is an accurate and correct final but I do have a  
13 signed resolution approving the retainer agreement and so  
14 can I show that to you?

15 A. Sure.

16 Q. So this would be 25 one.

17 THE COURT: Which resolution Number is it.

18 MR. FORDYCE: 36.

19 MS. IBARRA: It's resolution 36. Oh so you have  
20 it too.

21 MR. FORDYCE: No.

22 MR. STEIN: Exhibit 25 one.

23 THE CLERK: Yes.

24 MR. FORDYCE: Yeah.

25 THE COURT: Was there ever a resolution approving  
26 of your work prior to -- because I said you started working  
27 before you had this retainer agreement. Was there ever a  
28 resolution passed that said Rae Lamothe can work with us or

1 is representing us even though we don't have a written  
2 retainer agreement, in other words is there some resolution  
3 that would document the tribes approval of you as counsel  
4 for them working for them.

5 MR. STEIN: Yeah it's right here --?

6 A. I don't think, I think it would be that we had  
7 [SR\*] acknowledged that Ray is working for us, there's an  
8 after the fact resolution.

9 MR. STEIN: No.

10 MR. FORDYCE: In it helps Your Honor.

11 THE COURT: Let's see it.

12 MR. STEIN: June 24, 2001, resolution 15 it's  
13 [R\*E] cited here right in this agreement so --.

14 MS. IBARRA: Yeah it is, .

15 Q. So Ms. Lamothe if might refresh your recollection  
16 if you reviewed this one, this resolution.

17 THE COURT: I guess I'm getting ahead of myself.

18 MS. IBARRA: Which is January 27, 2002, with  
19 appears to be the same date as the execution but not signed  
20 copy of the retainer agreement.

21 MR. STEIN: And that [KO\*] would [KAOPBS] [TAOUT]  
22 a pre agreement under -- since it's in writing.

23 THE COURT: Counsel no speaking -- if you have an  
24 objection, objection, okay but we can't suggest answers to  
25 witnesses or have speaking objections I'm going to ask if  
26 you're acting as counsel you need to state your objection  
27 and your ground and let's leave it at that. What is your  
28 question of her.

1 Q. BY LEFT1: So does this refresh your recollection  
2 as to what your agreement was with the tribe?

3 A. Well it refreshes my recollection that I started  
4 in May and then I assume June 24 was their next meeting  
5 where they decide today retain me and then there was some  
6 period of time drafting the [TK-R] or getting the actual  
7 retainer agreement approved.

8 Q. And to your recollection -- you still don't know  
9 it was ever executed?

10 A. A version of the retainer agreement was  
11 executed.

12 Q. And we only have this one?

13 A. It certainly looks like t but I'd have to see a  
14 signed one and --.

15 Q. Okay let's move on to a different topic. You  
16 described working on a computer in Mr. Stein's office or  
17 maybe just using for printing and so forth. Do you recall  
18 your testimony about that?

19 A. Yes.

20 Q. Okay. So do you recall what kind of documents  
21 that [PWHROPBGDZ] to the tribe were stored in that  
22 computer?

23 A. Any of the contracts the tribe entered into, the  
24 resolutions, the petition for federal recognition. I don't  
25 know if the Morales litigation was there or not it probably  
26 would have been but I don't have a clear recollection of  
27 that one way or another \* \*.

28 Q. Would that have contained both word drafts and

1 like scanned executed copies documents \* \* Morales \* \*?

2 A. It certainly had word versions. Whether there was  
3 a scanner that PDF joinder documents back then --

4 Q. I know that was a long time ago?

5 A. I don't -- I don't recall. And then the hard  
6 copies were on the bookshelf.

7 Q. Okay. So you don't remember if there were scans  
8 on there but everything related to the tribe that you know  
9 of was in there?

10 A. I believe so. And then I would have duplicates.

11 Q. My other question for you is about you describe  
12 the tribal council as an LLC?

13 A. An entity was set up to transact business with  
14 vendors, investors et cetera because a -- well the tribe is  
15 not a normal -- not -- is not a common entity, it is a  
16 governmental body, an independent nation, there's a variety  
17 of ways a tribe functions but to transact business we  
18 decided that you needed an entity that you could file with  
19 the Secretary of State in California as the business entity  
20 to handle the business affairs.

21 Q. Did you set that up?

22 A. I believe I did, yes.

23 Q. So this was an actual like corporate entity and it  
24 was probably an LLC?

25 A. I believe so.

26 THE COURT: Whose idea was it to set up an LLC?

27 A. We -- either it was a corporation or LLC I'd have  
28 to look at something but --.

1 THE COURT: Regardless whose idea was it to set up  
2 an LLC for the tribe.

3 MS. IBARRA: Or a corporate form for it.

4 THE COURT: Or whatever corporate form?

5 A. Mr. Stein and I discussed it as in what is a tribe  
6 and what -- what is it and how how does it function when  
7 it's not a federally recognized tribe. State recognized  
8 tribe but not federally recognized. So we decided that we  
9 needed some entity that anybody -- any business partner or  
10 vendor or investor would acknowledge and understand is a  
11 legal entity in California.

12 Q. Right. So that gave other people confidence that  
13 they were doing business with an entity who could have  
14 liability or -- so do you recall if it was like -- well do  
15 you recall if it was to give other people confidence or was  
16 it to protect the tribe because sometimes you incorporate  
17 as corporate entity to protect -- to protect, you know  
18 individuals. Do you recall?

19 A. It was more to have an entity that other -- that  
20 third parties, disinterested parties would recognize as a  
21 legal entity in California.

22 Q. So I'm just wondering why the SMDC agreement never  
23 did business directly with that entity if that is -- you  
24 know because that would clarify some issues in that  
25 litigation too if that entity still existed? Do you know  
26 if it still exists.

27 THE COURT: The LLC or --.

28 MS. IBARRA: Whatever corporate entity that

1 were -- because you're not sure if it was an LLC, right?

2 The corporate entity that was incorporated.

3 A. I don't know if it still exists no objection.

4 Q. Okay so that. And then my other question is did  
5 it ever occur to anybody that the SMDC agreement should be  
6 doing business with that entity instead of the tribe?

7 A. The development company was representing the tribe  
8 itself.

9 Q. What do you mean by that?

10 A. The tribe -- the tribal council decided to hire  
11 SMDC to represent it to get a casino, either get federal  
12 recognition, get a casino, done whatever was necessary to  
13 obtain casino gaming in California. So Mr. Stein did not  
14 have a concern about the validity of the entity of the  
15 tribe whereas third parties may have.

16 Q. At this point it hadn't occurred to anybody that  
17 they might sue each other, right?

18 A. No. I mean it's always a possibility but it --.

19 Q. So I want to -- so let me just point you back to a  
20 document that we just located this is in our exhibit list  
21 and it's in our books and it's exhibit number 12. Because  
22 we were talking about Mr. Hugh McMullin and you've said  
23 you've met him?

24 A. Yes.

25 Q. So I want to point you to a document --.

26 MR. STEIN: May we see it.

27 MS. IBARRA: Sure it's exhibit number 12.

28 THE COURT: Plaintiffs exhibit.



1 MS. IBARRA: Plaintiff's 12.

2 MR. FORDYCE: Yeah okay we have it.

3 Q. BY MS. IBARRA: Is this something that you've ever  
4 been across in the documents of the tribe.

5 THE COURT: Did she describe what it was yet.

6 MS. IBARRA: Oh do -- should I describe it.

7 THE COURT: Well just ask her what is Exhibit 12.

8 MS. IBARRA: What is Exhibit 12?

9 A. It is a June 27, 2000 letter from Hugh McMullin to  
10 Sam Dunlap.

11 Q. And the title that he gives him?

12 A. Development agreement. Oh the title he gives Mr.  
13 Dunlap.

14 Q. Yes.

15 A. Spokesperson Gabrielino-Tongva Tribal nation  
16 tribal council.

17 Q. And generally what did you the letter say \* \* date  
18 \* \*?

19 A. That Mr. McMullin had been retained to review an  
20 agreement with Saint Monday development company, he did  
21 that, he advised against signing it and his work was done.

22 Q. And that was June 27th, 2000?

23 A. Yes.

24 Q. So that was actually before the agreement was  
25 executed?

26 A. Yes.

27 Q. Because we know the agreement was executed in 2001  
28 is what we've all seen. So then is -- did you have an

1 understanding Mr. McMullin's work with the tribe preceded  
2 the agreement when you knew him as the general counsel?

3 A. Yes.

4 Q. So you knew at the time that his work preceded the  
5 execution of the agreement or you know that now?

6 A. I know that now. I knew that he preceded me  
7 representing the tribe. I don't have a recollection of the  
8 dates that he worked for the tribe and where that fits in  
9 the timeline of everything that happened.

10 Q. And you don't recall any other communications you  
11 had with Mr. McMullin about the tribe?

12 A. I'd see him socially, catch up on you know who's  
13 doing what, who's had babies, who's getting married, you  
14 know I saw him social [HAOE].

15 Q. Turning to a different topic, we talked about  
16 resolutions yesterday. My last question on that is do you  
17 know if Mr. Stein drafted parts of resolutions even if he  
18 didn't draft the entire document?

19 {RIGHT1}: Objection misstates earlier testimony  
20 she said she drafted it.

21 THE COURT: Overruled?

22 A. To the extent that I cut and pasted from prior  
23 documents to use the template, I don't know who drafted the  
24 prior documents and then I would add whatever the current  
25 info was, whatever the resolution subject matter was.

26 Q. Did he ever draft a paragraph and say include this  
27 in the resolution?

28 A. He would certainly send bullet points. I don't

1 know -- I don't recall if he would accepted a paragraph or  
2 not, I know there were bullet points and topics and make  
3 sure that we -- you know make sure we cover this, make sure  
4 we cover that. I don't know.

5 Q. On the Morales litigation, my last question on  
6 that is, we talked about that yesterday, and then there was  
7 the judgment, there was at bankruptcy, right?

8 A. Yes.

9 Q. When the judgment came in against all of the  
10 individual Defendants, was there any negotiation on  
11 reducing the judgment?

12 A. Discussion with the clients or with --.

13 Q. With the opposing counsel or the opposing party,  
14 Morales' who were trying to enforce the judgment for a  
15 specific amount?

16 A. I don't recall but I would assume not because Mr.  
17 [SHRAFRTS] is -- I'll be kind, less than colleague [KWRAL].

18 Q. He's dog [EUT]?

19 A. No his habit was to whack me with the little swing  
20 get every time and still did you see when he sees me in  
21 court. So my conversations --.

22 THE COURT: Who is that?

23 A. Mr. Morales' attorney.

24 MS. IBARRA: Jack Schwartz was it?

25 A. When you -- at this point [PHRAOE] when a case is  
26 called come up together you typically hold the gate for  
27 whoever is behind you he takes the hunt to swing it and I'm  
28 gullible enough that every time the case is called I get up

1 and walk up and every time I get whacked and I still do.  
2 So my conversations with Mr. Schwartz were very curt and  
3 short. The other issue is I don't think anyone on the  
4 council had anything to offer, I don't think we could have  
5 put together a pot of money to say instead -- and I don't  
6 recall what the amount was but to say 50 cents on the  
7 dollar or --.

8 MS. IBARRA: 20 cents on the dollar or 10 cents?

9 A. To come up with a Number, I'm not saying I didn't  
10 try that but it doesn't sound -- I don't recall it as  
11 something that would have been viable air go Mr. Dunlap's  
12 bankruptcy.

13 Q. So then can I point you to one of the Defendants  
14 exhibits, it's Exhibit 5 '77, it has a reference to. I'll  
15 help you with this.

16 MR. FORDYCE: Five '77 counsel.

17 MS. IBARRA: 57 seven which is the Talley report  
18 which we saw a lot.

19 Q. BY MS. IBARRA: So you said you were paid \$60,000  
20 and that was in total for everything that you were owed?

21 A. That's my recollection, yes.

22 Q. So do you know why your name appears here -- can  
23 you just generally describe what this document is, I don't  
24 expect --.

25 THE COURT: This being 57 seven.

26 MS. IBARRA: 57 seven.

27 Q. BY MS. IBARRA: 57 seven?

28 A. An October 3, 2006 letter forlorn a- [TKER]

1 [TAEUD] a de [RERBGS] t a di a n at Talley and company, a  
2 memorandum from Ms. Door, accounting services final report.

3 Q. Are you familiar with Ms. [HROERPB] door?

4 A. No.

5 Q. Are you familiar with Talley and company?

6 A. Yes.

7 Q. How are you familiar with them?

8 A. Talley and company is an accounting company in  
9 Orange County I believe who was retained to do accounting  
10 work for the tribe.

11 Q. And this is a document we've discussed a lot in  
12 the trial but I don't know if you're familiar with it, are  
13 you familiar with it?

14 A. No it's after I left.

15 Q. So you weren't owed any money right, when you  
16 left?

17 A. I was owed my deferred compensation.

18 Q. So your deferred -- but you said you settled  
19 \$60,000 for that, no.

20 MR. STEIN: Misstates the testimony.

21 MS. IBARRA: Okay you can clarify.

22 THE COURT: Sustained?

23 A. I'd have to -- I'd have to look at the exit  
24 documents. There was -- I know I retained a percentage. I  
25 don't recall if the 60,000 zeroed out all of the deferred  
26 compensation or not.

27 Q. So are you also talking about the one percent or  
28 the reduction of the one percent that you were owed?

1 A. Correct.

2 Q. So if you [HRAO\*PBG] look at page -- gosh this  
3 isn't numbered but in exhibit 57 seven, it has --.

4 MR. STEIN: There's a number Five -- there is  
5 numbers at the bottom.

6 MS. IBARRA: There's Number at the bottom, I am  
7 looking at the vendor balance summary is attached.

8 MR. STEIN: 59 seven.

9 MS. IBARRA: Yes zero 59 seven [SKPEUFPLT] then  
10 [THR\*T] there's [AOFT] one on 60 four?

11 A. Oh Five -- oh 59 seven. Okay I'm there.

12 Q. BY MS. IBARRA: Okay so you're listed as owed --  
13 do you see your name?

14 A. Yes.

15 Q. In that list?

16 A. Yes.

17 Q. It says you're listed as being owed a- 550 --  
18 \$550,000 -- hundred thousand dollars.

19 THE COURT: I'm sorry that is \$550,000.

20 MS. IBARRA: Hundred thousand dollars of yeah 550  
21 had not thousand dollars.

22 MR. STEIN: 56 zero.

23 MS. IBARRA: My vision [H-Z] bad is it 56 zero.

24 MR. STEIN: Under Rae Lamothe it says 56 zero  
25 [thou|thousand] under vendor [PWA\*L] balance summary on  
26 Page 59 seven.

27 THE COURT: Okay so we're stipulating that it's 56  
28 zero I guess, okay.

1 MR. STEIN: And that is it. On Page 60 four that  
2 is --.

3 THE COURT: Well wait. Let her ask her question.

4 MR. STEIN: Sure.

5 THE COURT: Let's take it one page at a time.

6 Q. BY MS. IBARRA: Were you aware that you were  
7 listed as having been owed this amount of money by the  
8 tribe?

9 A. No I -- I don't know what happened with the  
10 accounting after I left.

11 Q. And nobody did anybody call you and ask you if  
12 this is the amount of money that you thought you were owed?

13 A. I don't recall anyone calling, no.

14 Q. Do you as you sit here today still think the tribe  
15 owes you some hypothetical money in the future?

16 A. I would have to double check the exit documents  
17 but my recollection is the 10 year term has expired.

18 Q. The 10 year term?

19 A. Yes.

20 Q. So would that be in the retainer agreement that we  
21 looked at?

22 A. That would be in the -- either in the retainer or  
23 the exit paperwork.

24 Q. Do you want to take just a minute to look at the  
25 retainer that I showed you that to see if it's in there.

26 THE COURT: Do you want to take a break.

27 MS. IBARRA: Yes.

28 THE COURT: 10 minutes. You can step down and

1 take a look at it we'll be back in 10 minutes.

2 (Break taken.) 11:04 AM to 11:14 AM.

3 THE COURT: Gabrielino versus Mr. Stein [\*RBGS]  
4 BC361307. You may continue.

5 MS. IBARRA: Yes. Actually we had a question  
6 pending about the retainer agreement, if you could just  
7 look to see whether that provision was in there.

8 A. A similar provision is in there.

9 Q. Okay.

10 A. While I was working for the tribe, the  
11 compensation was to be \$10,000 a month deferred and the one  
12 percent success fee, whatever you want to call it. And  
13 there was a time window to -- strike that -- there was a  
14 time window in which I would collect the one percent, it  
15 didn't go on in you perpetuity h it went on for a time  
16 finite window, after I left, they were going to have pay me  
17 the deferred compensation and a reduced percentage and that  
18 agreement would stay in effect I believe for 10 years so  
19 that if the tribe got a casino in that 10 year window then  
20 the percentage would kick in for the original term.

21 Q. Okay. So as you sit here today you don't think  
22 you're still owed that money then?

23 A. I believe --.

24 MR. STEIN: Objection which money.

25 THE COURT: Okay sustained which money are you  
26 referring to.

27 Q. BY LEFT1: So let's say, do you still think you're  
28 owed my money by the tribe?



1 A. I believe the 10 year window has passed.

2 Q. So then that's a no?

3 A. Correct.

4 Q. Okay. I think that's all I have. Thank you.

5 THE COURT: All right cross-examination.

6 MR. STEIN: It would be --.

7 THE COURT: By whoever want to Stein.

8 MR. STEIN: Redirect.

9 MR. FORDYCE: Mr. Stein is handling that.

10 THE COURT: Oh redirect are we in your case now,  
11 we've been jumping back and forth.

12 MS. IBARRA: Oh yeah.

13 MR. STEIN: I called Ms. Lamothe as a witness,  
14 this was the cross-examination.

15 THE COURT: So she she your witness.

16 MR. STEIN: And we mentioned about two bites of  
17 the apple, if we can go back over the old stuff.

18 Q. BY MR. STEIN: What I would like to do now is Ms.  
19 Lamothe let's just try to get down in a way that we can  
20 refer to, just the basic chronology because a lot of dates  
21 have been thrown around and perhaps some conclusion  
22 created. And you can -- so I have -- Hugh McMullin tribal  
23 general counsel, having seen the letter, would you say he  
24 was general counsel for the tribe, to your understanding?

25 A. Either he was general counsel or he was retained  
26 just to review the development agreement, I don't recall --  
27 or I don't know.

28 Q. Okay so let's start with Hugh McMullin. And what

1 date would that be?

2 A. The date of his -- the date that he reviewed the  
3 development agreement?

4 Q. Uh-huh.

5 A. That was exhibit number.

6 MS. IBARRA: Was it 12.

7 MR. FORDYCE: 12.

8 MS. IBARRA: It was exhibit number 12 in  
9 Plaintiffs.

10 THE COURT: Are you talking about the date, dear  
11 Sam, it looks like June 27th 2000 is the date of the letter  
12 but that's the date where he says I'm no longer  
13 representing them I think.

14 MR. STEIN: Right.

15 THE COURT: So I don't know --.

16 Q. BY MR. STEIN: So can we start with Hugh McMullin  
17 was attorney for the tribe June 2000?

18 A. Yes.

19 Q. And that was your -- having been refreshed is that  
20 your understanding now.

21 THE COURT: Well that's a little bit un clear  
22 because the June 27th, 2000 letter says that -- let's see I  
23 am withdrawing as counsel so I guess you do say prior to  
24 June 27th, 2001.

25 MR. STEIN: Prior to. And again the idea here is  
26 just to clarify the dates here because we're dealing over a  
27 long period of time. And then Steve Otto meetings as set  
28 forth in resolution 10.

1 THE COURT: Did you see anyone have resolution 10.

2 MR. STEIN: And what did we say, January 2000 --  
3 December 2000.

4 THE COURT: Hold on.

5 MR. STEIN: And January 2001.

6 THE COURT: Hold on I need to see resolution 10.  
7 And you're asking her what?.

8 Q. BY MR. STEIN: Is it your understanding that Steve  
9 Otto worked as the attorney -- worked with the tribal  
10 council as an attorney in December and January of 2001,  
11 December 2000 and January 2001.

12 THE COURT: Maybe if you need to touch my  
13 paperwork please let me know?

14 A. Sorry.

15 MS. IBARRA: Does the witness need to look at  
16 resolution 10, should I --?

17 A. Yeah where is resolution 10.

18 MS. IBARRA: It's attached to exhibit 569.

19 MR. STEIN: 569.

20 MR. FORDYCE: It is part of what's noted as 569 in  
21 you're exhibit books but it is now Exhibit 154 two and it  
22 is Bates stamped zero 49 seven and it's about half to  
23 two-thirds of the way through that 569 document.

24 MS. IBARRA: Can I approach to help her with the  
25 books.

26 THE COURT: Sure?

27 A. So resolution 10.

28 MR. STEIN: And you won't need that to you can put

1 that aside?

2 A. Resolution 10 --.

3 Q. Leave it open I'll put it aside?

4 A. So resolution 10 is dated March 4 of '01.

5 Q. The paragraph on Steve Otto, what page would that  
6 be now, make 498.

7 MR. FORDYCE: You're correct. It's the first full  
8 whereas clause on that page which is the second  
9 paragraph.

10 A. Say that again.

11 MR. FORDYCE: Oh I'm sorry it's --.

12 Q. BY MR. STEIN: Is it your understanding based on  
13 review of the documents that Mr. Steve Otto was an attorney  
14 worked with the tribal council in December and January --  
15 December 2000 and January 2001?

16 A. That's what resolution 10 indicates, yes.

17 THE COURT: So is that --.

18 MS. IBARRA: Nonresponsive.

19 THE COURT: Yeah sustained, is that your believe  
20 and your understanding not that's what it says, because I  
21 can read what it says. What is your belief as to whether  
22 Otto was representing the tribe?

23 A. I don't have a personal understanding.

24 THE COURT: And this doesn't help you make that  
25 determination?

26 A. No.

27 THE COURT: All right?

28 A. This predates me.

1 Q. BY MR. STEIN: And the fact that it was signed by  
2 eight people as being correct doesn't refresh your  
3 recollection that these people certified that it is correct  
4 and signed it?

5 A. It doesn't refresh my recollection because I know  
6 most of these names but I've only met one of them.

7 Q. Okay. And once again, just to set forward a  
8 chronology and we'll use this chronology in your later  
9 testimony as to what you knew and didn't know. Resolution  
10 10 --.

11 THE COURT: Just to be clear, there's no Steve  
12 Otto entry there.

13 MR. STEIN: Steve Otto meetings.

14 THE COURT: Yeah that's all stricken, she doesn't  
15 have any memory of it. I just want to be clear that you  
16 are not going to try to represent to her that that is the  
17 case using that.

18 MR. STEIN: So Ray doesn't know, is that okay.

19 MS. IBARRA: Just for the record, the writings on  
20 the board aren't part of the record, right.

21 THE COURT: Right they're not, they're not  
22 exhibits.

23 MR. STEIN: And we've been through this before but  
24 they've prove help. In the past.

25 THE COURT: Yeah I just want to make sure that  
26 you're not going to try to later show her something that  
27 you've written as if that was her testimony.

28 MR. STEIN: Certainly.

1 THE COURT: You have to make sure that if you're  
2 going to write something there that it accurately reflects  
3 what her testimony is, if she says I don't know. So you  
4 need to make that clear.

5 MR. STEIN: Ray doesn't know.

6 THE COURT: Ray doesn't know if Steve Otto had  
7 meetings as noted in resolution 10.

8 MR. STEIN: Can I put a question mark.

9 THE COURT: Yeah she doesn't know, that's her  
10 testimony. Soy just --.

11 MR. STEIN: I just want to get a chronology  
12 together but.

13 THE COURT: I understand but that's the problem, I  
14 don't want you to represent to her later that that's what  
15 she said or that was the testimony so. Okay so that's  
16 accurate, she does not know whether that's the case.

17 Q. BY MR. STEIN: Resolution 10 adopted without Steve  
18 Otto and that was March of 2001. Based on your review of  
19 tribal council records did that in fact occur in March of  
20 2001?

21 A. It predated me, I assume it happened, I mean I  
22 have no reason to think it didn't happen but.

23 Q. We've had prior testimony of the tribal  
24 administrator that it did, was it in the tribal council  
25 notebooks in the GT Tribe room?

26 A. Yes I believe it was. There wasn't a time after I  
27 started that the tribe told -- the council told me that  
28 anything previous was inaccurate.

1 Q. Can I put tribal council records here?

2 A. Sure?

3 A. I'll put tribal council records, again just for  
4 accuracy and to make sure we don't make a mistake.

5 THE COURT: That tribal council records what?  
6 What is your testimony ma'am concerning tribal council  
7 records and resolution 10?

8 A. That resolution 10 would have been in the binders  
9 of the resolutions at the tribal council office.

10 THE COURT: Okay.

11 Q. BY MR. STEIN: Then do you recall --

12 THE COURT: So what does that say up there, that  
13 says resolution 10 adopted without Steve Otto March 2001,  
14 so I'm not sure that's what her testimony is so I think  
15 we --.

16 MR. STEIN: Forgive me I thought this would  
17 benefit the court, it's obviously not, let me start at a  
18 different tactic.

19 Q. BY MR. STEIN: Can you turn to resolution 46  
20 please and it's also known as Exhibit 15 48 now?

21 A. Okay I'm there.

22 THE COURT: Let me find that on here, I don't see  
23 it. He think it was 46 is that what you were referring to.

24 MR. FORDYCE: Correct Your Honor, resolution 46.

25 THE COURT: Resolution 46.

26 MR. FORDYCE: Which is new Exhibit 15 48 on the  
27 Bates number at the bottom is '05 20.

28 THE CLERK: 46.

1 THE COURT: Uh-huh.

2 Q. BY MR. STEIN: And can we go to the last page of  
3 the resolution, the certification on Page 25 one?

4 A. Yes.

5 Q. And were Martin Alcala, Virginia Carmelo, Sam  
6 Dunlap, Shirley Machado and Ed PERS known to you as the  
7 tribal council on September 28 of 2003?

8 A. Yes.

9 Q. And to your knowledge did they in fact sign  
10 resolution 46?

11 A. I would assume so, yes \* \*.

12 Q. And attached as Exhibit A to resolution 46 is an  
13 amendment and modification agreement?

14 A. Yes.

15 Q. And for the record that's now 1549?

16 A. Yes.

17 Q. And let's go through it paragraph by paragraph,  
18 who was the amendment and modification agreement between to  
19 your understanding?

20 A. Between the Gabrielino-Tongva Tribe and Saint  
21 Monica development company.

22 Q. And going to the end of the agreement, is that  
23 your signature?

24 A. Yes.

25 Q. And did you sign that on or about August 10th of  
26 2003?

27 A. Yes.

28 Q. The first whereas clause, could you read the first



1       whereas clause please.

2               THE COURT:   Are we talking about the resolution  
3       or.

4               MR. STEIN:   The amendment.

5               THE COURT:   Or the amendment it would be the  
6       amendment.

7               MR. STEIN:   Amendment, good point.

8               MS. IBARRA:   So Bates 25 two.

9               MR. FORDYCE:   I think the more recent Bates is at  
10       the very bottom right corner so it's '05 23.

11              MS. IBARRA:   Okay got it?

12              A.   Whereas, on March 4, 2001, the tribal council  
13       approved resolution Number 10, contractual agreement with  
14       Saint Monday development company, LLC, establishing a  
15       contractual relationship between the tribe and developer,  
16       to accomplish certain development tasks in connection with  
17       tribal government, the federal recognition process, the  
18       process of establishing a tribal state gaming compact, the  
19       process of locating and obtaining lands to be placed into  
20       trust status to form a reservation, and the process of  
21       construction and opening a casino there on, paren,  
22       recognition process.

23              Q.   When you signed this and approved it as to form  
24       and content, did you do that because it was your  
25       understanding in 2003 that this was true?

26              A.   Yes.

27              Q.   So since September 2003, have you come across any  
28       facts that makes you think that it wasn't true?

1 A. No.

2 Q. So would it be your testimony [THAOD] it's your  
3 understanding in 2003 and today that resolution 10 was  
4 approved in March of 2001?

5 A. Yes.

6 Q. Okay. Moving to the next whereas clause could you  
7 please read that?

8 A. Whereas, on March 4, 2001, the tribal secretary  
9 mayor ago, a guilty, on behalf of the tribal council and  
10 the tribe and Jonathan Stein, president on behalf of the  
11 developer, both executed that certain development agreement  
12 paren the agreement, dated as of February 1, 2001, which  
13 made the agreement valid, binding and actually adopted  
14 obligations of the tribal council and the tribe.

15 Q. When you signed this, -- when you approved this  
16 as to form and content in 2003, did you do so because you  
17 thought this statement was true?

18 A. Yes.

19 Q. Since that date, have you come across any facts  
20 which tells you the statement is not true?

21 A. No.

22 Q. And it says here that Jonathan Stein was president  
23 on the behalf of the developer, to your knowledge was  
24 Jonathan Stein an attorney acting on behalf of the tribe  
25 own March 2001, when you signed this did you note a set the  
26 facts that indicated that?

27 A. I don't -- I didn't know and don't know of any  
28 facts that would indicate that you were acting as an

1 attorney for the tribe on March 4, 2001.

2 Q. Signed you signed it in 2003, have you come across  
3 any facts that would indicate that Jonathan Stein acted as  
4 an attorney of the tribe on March 4th [Thou|Thousand] One?

5 A. No.

6 Q. And next whereas clause could you read that  
7 please?

8 A. Where was, on April 17, 2001, the tribal council  
9 approved resolution Number 17 confirming Number of tribal  
10 council positions at 10, which approved and ratified all  
11 prior actions of the tribal council, and adopted them as  
12 actions of the reformed tribal council, including  
13 resolution Number 10 and the agreement, and affirmed them  
14 as valid, binding and duly adopted obligations of the  
15 tribal council and the tribe; .

16 Q. Was it your understanding when you signed this in  
17 2003 that the SMDC agreement was valid binding and duly  
18 adopted as of April 17, 2001?

19 A. Yes.

20 Q. And as tribal general counsel in 2003, was going  
21 back to the previous whereas clause it says which made the  
22 March 2001 made the SMDC agreement valid binding and duly  
23 adopted obligation of the tribal council and the tribe, was  
24 it your understanding in 2003 that that was true?

25 A. Yes.

26 Q. And that it it was your view based on your tribal  
27 records and other due diligence that the tribe was bound  
28 validly by the SMDC agreement based on the March 2001

1 approval?

2 A. Yes.

3 Q. Looking at those two approvals, both in March of  
4 2001 and later in April 17th of 2001, have any facts come  
5 to your attention since then that makes you doubt that the  
6 SMDC agreement was valid binding and duly adopted on those  
7 dates?

8 A. Could you -- could you read that back.

9 THE COURT: Yes read it back.

10 (Record read.)

11 A. I guess the Mr. Otto letter saying -- I wasn't  
12 aware of that but contradicting whether or not he was there  
13 and advised the council about the agreement.

14 Q. BY MR. STEIN: And does that make you feel that  
15 these statements are not true because of that letter?

16 A. If the tribe did not or the council did not have  
17 the agreement explained to them by counsel then I don't  
18 want to opine on whether or not it's enforceable,  
19 that's --.

20 THE COURT: Well that's -- that's a legal  
21 conclusion. I'll propose --

22 MR. STEIN: And that's as of --

23 MS. IBARRA: I'll object it's a legal conclusion.

24 THE COURT: Hold on.

25 MS. IBARRA: I'll object that it calls for expert  
26 opinion.

27 THE COURT: Yeah all of it does, sustained, calls  
28 for expert opinion.

1 MR. STEIN: Okay.

2 Q. BY MR. STEIN: On -- any problems when you -- when  
3 the resolution 17 ratified prior actions of the tribal  
4 council, does that make the agreement enforceable when you  
5 ratify it in case it wasn't enforceable before.

6 MS. IBARRA: I'm going to object that it also --.

7 Q. BY MR. STEIN: In your opinion.

8 MS. IBARRA: That also calls for expert opinion.

9 THE COURT: I think so, sustained.

10 MR. STEIN: Your Honor may I argue the point that  
11 it's --.

12 THE COURT: Yes you may.

13 MR. STEIN: She was trying.

14 THE COURT: You can ask her what her belief was at  
15 the time, do you believe when you signed it, I suppose you  
16 can ask her that but --.

17 MR. STEIN: She was tribal council.

18 THE COURT: It's her believe.

19 MR. STEIN: She was tribal general counsel she had  
20 zero to form an opinion about this, she approved the  
21 writing of this, welcome -- we will hopefully show in later  
22 testimony that she in fact wrote this so for to you say she  
23 cannot say yes in my view in my opinion for which she is  
24 qualified and would you like me to take her through the  
25 actions to show that she was in fact an attorney in  
26 California that can render an attorney-client, that can  
27 render an opinion as to whether a contract was valid and  
28 binding.

1 THE COURT: She can testify as to her belief, what  
2 she believed at the time.

3 MR. STEIN: And can she also testify as to her  
4 opinion.

5 THE COURT: To that's -- that's a different  
6 matter. All the things about whether there's an  
7 attorney-client relationship, whether there's a valid and  
8 enforceable contract, those are matters outside her  
9 purview. First all the court has to hear from experts and  
10 then make a decision about that.

11 MS. IBARRA: Yeah.

12 MR. STEIN: Your Honor, forgive me.

13 THE COURT: These are different questions.

14 MR. STEIN: But as tribal general counsel we're  
15 talking about what she saw and heard and her opinions at  
16 the time. And a real estate agent can give you an opinion  
17 on the value of a house that he looked at.

18 THE COURT: If he qualified as an expert sure and  
19 gave such an opinion later.

20 MR. STEIN: No. If he's qualified as a real  
21 estate agent working in the town, he can do that. He  
22 doesn't have to be an expert because he saw the house, he's  
23 giving his opinion, you can then say he's a crummy real  
24 estate agent. She's an attorney. They can say you're a  
25 crummy attorney, but she as an opinion under California law  
26 because she has a license to issue them saying is valid,  
27 binding opinion and she can write it out, as she did here,  
28 that that was her opinion that it's valid and binding.

1 THE COURT: She didn't say that here, she didn't  
2 say that at all here.

3 MR. STEIN: That's because you're not allowing her  
4 to state what her opinions are.

5 MS. IBARRA: I think the distinction is she can  
6 say what her opinion was at the time but you can't ask her  
7 her ultimate opinion about whether something is binding,  
8 whether something enforceable or whether something creates  
9 an attorney-client relationship but you can ask her what  
10 she thought at the time because she was a percipient  
11 witness.

12 MR. STEIN: That's exactly what I'm trying to do.

13 THE COURT: All right so you can testify as to  
14 what you believed at the time because you signed this  
15 document. I think we're just misstating the same thing  
16 but?

17 A. And the original question?

18 THE COURT: You can --

19 MR. STEIN: let me give you a new one. So  
20 following the Court's direction, our job is to cooperate  
21 with the court. So following the Court's direction, I'm  
22 going to ask you about your opinion at the time.

23 THE COURT: No, her belief; her belief at the  
24 time.

25 MR. STEIN: Your belief at the time and your  
26 opinion as the tribal general counsel, what your opinion  
27 was.

28 THE COURT: You're not asking that one you're

1 asking the first.

2 MR. STEIN: Forgive me. She just agreed I could  
3 ask the second one.

4 MS. IBARRA: No. I said belief.

5 MR. STEIN: No you said opinion.

6 MS. IBARRA: Okay, then I misspoke I meant belief  
7 not opinion.

8 MR. STEIN: Forgive me your honor. I very much  
9 want to lay this down, because again if you have an  
10 attorney giving his opinion at the time, it's the same way  
11 as a real estate agent giving an opinion at the time it's  
12 the same way of the owner of a house giving his opinion at  
13 the time, it's the same way as a court reporter giving her  
14 opinions saying yeah, I was there, I think I heard him say  
15 that.

16 THE COURT: Well, that's her belief. Overruled.  
17 Go ahead and ask her her belief at the time.

18 MR. STEIN: Very good, okay very good we'll use  
19 the word belief.

20 Q. Was it your belief that the March 4th adoption  
21 when you reviewed the documents in 2003 -- first of all let  
22 me step back. What did you do to prepare for signing this  
23 amendment and medication agreement?

24 A. You and I would have had discussions about the  
25 parts of the original agreement that needed to be amended  
26 and we would have had a list of bullet points and then --.

27 Q. Did you want to be comfortable with your  
28 understanding of the agreement and therefore, you wrote



1 this amendment and modification agreement.

2 MS. IBARRA: Objection leading.

3 THE COURT: Yeah sustained, assumes facts.

4 MR. STEIN: Okay let's use her prior testimony  
5 to -- because she -- she said that earlier so let's go to  
6 where she said that earlier and you can instruct me on how  
7 to do it.

8 THE COURT: Well where do you have that testimony.

9 MR. STEIN: We have that testimony in the rough  
10 transcript.

11 THE COURT: Okay let's see it, counsel.

12 MR. FORDYCE: We're looking for it Your Honor.

13 MR. STEIN: Okay go to take -- Page 20.

14 THE COURT: Show it to opposing counsel and we'll  
15 read it to the witness so if it refreshes you then.

16 MR. STEIN: Actually go to Page 25 to 26, that  
17 exact page, Page 20 is a different point. And also Page  
18 22.

19 MS. IBARRA: I'm going to object that it doesn't  
20 necessarily say what counsel represents it to say but I'm  
21 okay with reading that to the witness and she can make her  
22 own -- she can clarify what she meant there.

23 THE COURT: Okay.

24 MS. IBARRA: If you want to read 25.

25 THE COURT: If you want to read it to the witness  
26 then read it to the witness, if you're referring to a don't  
27 it's got to be clear from what you're reading what  
28 documents she's referring to but --.

1 MR. STEIN: Let's start at page --.

2 MR. FORDYCE: How do you tell want to page.

3 MR. STEIN: Let's start at Page 20 and go through  
4 26.

5 MS. IBARRA: All of that.

6 MR. STEIN: Read all of it.

7 THE COURT: Read all of it.

8 MS. IBARRA: I just saw Page 22 through 26.

9 MR. FORDYCE: Look at all of it, feel free.

10 THE COURT: Do you have a hard copy of it, that  
11 might be easier.

12 MR. STEIN: We didn't bring our printer in, that  
13 would be easier Your Honor.

14 MR. FORDYCE: No I don't think we do Your Honor I  
15 apologize.

16 THE COURT: That's okay I just thought it would be  
17 easier if it was in hard copy.

18 MS. IBARRA: Well, I still contend that it doesn't  
19 say what you're representing that it says.

20 MR. STEIN: Have you had a chance to look at it.

21 MS. IBARRA: Yeah.

22 MR. STEIN: Can you read Niall, please. You've  
23 got a lot of reading to do you've got a great voice.

24 MS. IBARRA: You can read it to the witness to  
25 refresh her recollection.

26 MR. FORDYCE: Your Honor is that okay.

27 THE COURT: Yeah why don't you follow along,  
28 plaintiff.

1 MR. FORDYCE: I can also --.

2 MR. STEIN: Top of Page 20 to bottom of Page 26.

3 THE COURT: If you have don't have a hard copy to  
4 give to Plaintiffs counsel she follows along with you  
5 reading.

6 MR. STEIN: And by the what I Her Honor I'll bring  
7 in a hard copy for our next session.

8 THE COURT: This is just to have see to help you  
9 refresh maybe it will maybe it won't but this is just to  
10 see if it does okay.

11 MS. IBARRA: Can you give us the date of this  
12 testimony.

13 MR. STEIN: July 21.

14 MR. FORDYCE: This is July 21, 2016 and this is  
15 from the rough transcript, starting at Page 20 from the  
16 rough from the -- well I guess from Line 1 which is a  
17 partial sentence and as follows: Is approved by the tribal  
18 council, do you recall the signature of Martin Alcala,  
19 answer, I don't have an opinion, I mean it appears to be  
20 mart I understand, phonetic signature but I don't recall  
21 what his signature looks like, question was he a member of  
22 the tribal council in 2003 to your best recollection,  
23 answer, yes. Question, was Virginia Carmelo a member of  
24 the tribal council in 2003 to the best of your  
25 recollection, answer, yes, question, Shirley Machado,  
26 answer yes, question, Sam Dunlap, answer, yes, question,  
27 Edgar Perez, answer, yes, question and now sub describing  
28 those signatories that those are in fact their signatures

1 was Sam Dunlap the tribal secretary at the time, answer,  
2 correct. Question, and that resolution approved this  
3 amendment and modification agreement, answer, yes.  
4 Question, and before looking at the terms of the resolution  
5 and the terms of the agreement, is that your signature,  
6 answer, yes. It will -- I'm sorry question, and you're  
7 approving it as to form and content, onto Page 21 of the  
8 rough, answer yes, question, and you were the phonetic of  
9 some sort of Rae Lamothe at the time.

10 MR. STEIN: Law office.

11 MR. FORDYCE: Probably law office but you know,  
12 answer, yes p question, and you were tribal general counsel  
13 at that time, answer, yes. Question, why do you say that  
14 you were independent counsel at that time, answer, I had my  
15 own practice, one of my clients was the tribe. Question,  
16 and was Mr. Stein telling you what to do when you gave  
17 legal advice to your client GT Tribe, answer, not as to  
18 legal advice, no. The court asks, did you give legal  
19 advice to the tribe. Answer, me? The court, uh-huh,  
20 answer, yes. The court then asks -- there's a phonetic  
21 that I don't recognize, did you give legal advice to them  
22 with respect to this agreement. Answer, my recollection  
23 after reviewing this is yes but -- the court, but the,  
24 answer, it was 12 years ago and I don't have a vivid  
25 recollection of the events now but I would have reviewed it  
26 with them. The court, you would have reviewed, answer,  
27 yes, the court, the document with them, answer, yes. The  
28 court, the entire tribal council, answer, well Cindy did

1 not sign it so I don't know if she would have been there  
2 during the discussion process. She apparently was there  
3 the day she adopted it, she would have received a copy via  
4 e-mail and may or may not have called me with questions.  
5 The court, so you had a discussion with them at least the  
6 signators about the SMDC agreement, answer, yes. The  
7 court, and all its contents, answer, yes. The court, and  
8 were you alone with your clients at the time, with the  
9 clients, answer, yes. Typically they would contact me,  
10 they'd phone me, I didn't necessarily sit down with all of  
11 them, they would get the draft, people would call me,  
12 answer questions, I may or may not have sat town with them  
13 as a group, I don't recall?

14 The court, so your answer was you didn't, phonetic  
15 with them as a group but you're standing up, did you have  
16 something to say. Mr. Golding who -- I'll just read. Mr.  
17 Golding, Your Honor I didn't know with this line of  
18 questioning, I couldn't intent to interrupt the court  
19 before we get into the actual content of Ms. Lamothe's  
20 communication and as their attorney and understand that  
21 there may be an attorney-client privilege issue that could  
22 arise during the course of that, I would just ask that Ms.  
23 Lamothe not being aware of the prior proceedings and I as  
24 her counsel not be held to the position of having to object  
25 on attorney-client basis since the tribe is represented by  
26 its own attorney here. Ms. Ibarra and this is Ms. Ibarra  
27 speaking, oh the privilege has been waived with respect to  
28 these proceedings for -- especially with respect to the

1 SMDC agreement because of that issue. Mr. Golding, so for  
2 further, there's no name to name attorney d I'm getting  
3 client but phonetic objections, Ms. Ibarra, correct. The  
4 court it's only waived to these proceedings if they have  
5 some connection with her in connection with this other  
6 lawsuit or some other matter, the privilege would apply but  
7 as to these proceedings, this agreement, my understanding  
8 is it's waived. Ms. Ibarra, it is waived. The court, if  
9 you think there's something --.

10 THE COURT: What page with re on now.

11 MR. FORDYCE: We are now if the middle of page 23.

12 THE COURT: We're going to what page.

13 MR. FORDYCE: I can do it a lot faster, but for  
14 Cindy I can --

15 THE COURT: We're going through a lot of  
16 irrelevant stuff.

17 MR. FORDYCE: I can skip it but --

18 THE COURT: Well, the problem is you don't have a  
19 reference as to which resolution it's referring to. You  
20 start with it's signed and we don't know what the it is,  
21 that's the problem. I'm assuming since we're reading  
22 through 26 pages there that somewhere there we're going to  
23 find a reference to which resolution so -- and that hasn't  
24 happened yet.

25 MR. FORDYCE: You know what? We should have  
26 started on Page 19.

27 THE COURT: Well why don't you just showed it to  
28 Plaintiffs counsel and if you can stipulate as that at

1 least that portion is referring to that resolution.

2 MS. IBARRA: Well my -- I'm trying to keep track  
3 of was going on. The original question because we lost  
4 track of what's going on in the testimony, that happened  
5 long ago the original question was what that I objected to  
6 Ms. Lamothe.

7 MR. STEIN: Forgive me the court has a point,  
8 resolution 46 was mentioned twice in what he read, let's go  
9 back to Page 19 and meaning sure we're answering the  
10 Court's question.

11 THE COURT: I didn't hear any reference to  
12 resolution 46 there's a reference to resolution, but it's  
13 not referring to a number, there are so many different  
14 resolutions.

15 MR. FORDYCE: Your Honor I'll clarify.

16 THE COURT: Why don't we do this, why don't we  
17 break early for lunch and you can spend the time and look  
18 over the testimony and figure out where and work with  
19 Plaintiffs counsel and figure out where we can clarify  
20 that, perhaps you know it is referring to the appropriate  
21 resolution, it may very well be you can just stipulate to  
22 it and read it to help refresh her recollection but it's  
23 not clear from what you read that that's the resolution  
24 you're referring to.

25 MR. FORDYCE: It's four lines on Page 19 it says  
26 now you've had a chance to chance to refresh your  
27 recollection about 46 I started reading it before I came on  
28 the witness stand, yes and it's dated of course, September

1 28th, 2003 and then where I started reading it is approved  
2 by the tribal council.

3 THE COURT: So why don't you talk to Plaintiffs  
4 counsel she can look at it.

5 MS. IBARRA: But can we just go back a little bit  
6 about my notes about where we -- the pending question is  
7 what Ms. Lamothe did to prepare this and so what we were  
8 looking in the transcript is Mr. Stein said that we were  
9 going to have prior testimony that she drafted this, is  
10 that what we're doing.

11 THE COURT: That's what we're looking for.

12 MR. STEIN: That's what --.

13 THE COURT: And drafted this, I think is referring  
14 to.

15 MR. FORDYCE: 46.

16 THE COURT: Resolution 46, we haven't heard  
17 anything to that effect yet.

18 MS. IBARRA: I haven't heard that yet.

19 THE COURT: Assuming that there's something in  
20 there, otherwise I'm just going to strike it out of the  
21 testimony. Why don't we strike it, it's stricken and you  
22 go back and you look for --.

23 MS. IBARRA: We'll meet and confer about it and  
24 then --.

25 THE COURT: Right. Meet and confer see if you can  
26 come up with it. All right.

27 MR. STEIN: We're going to be here through  
28 calendar 2017 is my estimate.



1 THE COURT: For what.

2 MR. STEIN: This trial will last through December  
3 of 2017 my estimate.

4 THE COURT: I hope not. I hope not.

5 MR. STEIN: Your Honor I've done a lot more trials  
6 than me but I've done enough to know we'll be here through  
7 2017.

8 THE COURT: Well, we're going two hours a day,  
9 perhaps if we can resolve that we can move the trial along  
10 faster.

11 MR. STEIN: Yeah because that's what's great about  
12 heart attacks heart attacks is you can always take them  
13 back afterwards.

14 THE COURT: Well yeah so I guess doing the  
15 depositions doesn't help either.

16 MR. STEIN: Well the court is correct, and that's  
17 why I have co could you be in the depositions as well as an  
18 attorney there in case the worst happens.

19 THE COURT: Well let's try to get through this  
20 quickly so we don't have the worst happen?

21 A. Shall I get my calendar.

22 THE COURT: Yeah tomorrow I'm assuming you're  
23 available tomorrow if not.

24 MR. FORDYCE: Yes Your Honor. Oh Ms. Lamothe I  
25 apologize. I'm here?

26 A. Tomorrow being the 26th.

27 MR. STEIN: It's my birthday?

28 A. I'm available.

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THE COURT: All right 10:00 o'clock thank you?  
A. 10:00 a.m., okay. 11:57 AM.