

*ROUGH DRAFT*

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**UNEDITED ROUGH DRAFT**

THE COURT: GABRIELINO-TONGVA TRIBE VERSUS STEIN,  
BC361307.

AND, MADAM COURT REPORTER, I'M SIGNING YOUR ORDER.  
COUNSEL, WILL YOU MAKE YOUR APPEARANCES AGAIN?

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1 MS. IBARRA: SURE. DELIA IBARRA ON BEHALF OF  
2 PLAINTIFF GABRIELINO-TONGVA TRIBE.

3 MR. FORDYCE: GOOD MORNING, I'M NIALL FORDYCE ON  
4 BEHALF OF MR. STEIN AND LAW OFFICES OF JONATHAN STEIN.

5 MR. PHILLIPS: JONATHAN STEIN ON BEHALF OF SMDC AND  
6 THE CRANE GROUP.

7 THE COURT: OKAY. THANK YOU. EVERYBODY. JUST A  
8 QUICK RECAP BEFORE WE START. MR. STEIN IS GOING TO CONTINUE  
9 HIS TESTIMONY. THE COURT TENTATIVELY WOULD LIKE TO BE ABLE  
10 TO ADDRESS THE QUANTUM MERUIT ISSUE\* ON FRIDAY. I HAVEN'T  
11 SEEN THE PAPERS SO I'M NOT SURE HOW LENGTHY THEY ARE AND  
12 MUCH EFFORT IT MAY TAKE SO THAT'S WHY I'M TENTATIVELY  
13 SCHEDULING -- ADDRESSING THAT ISSUE ON FRIDAY. I MAY NEED  
14 TO ADDRESS ON MONDAY, BUT I'LL LET YOU KNOW AS WE GET CLOSER  
15 TO FRIDAY. THE REST OF THE WEEK, WE'VE DISCUSSED THAT THE  
16 EVIDENCE WILL ADDRESS ATTORNEY-CLIENT RELATIONSHIP INDIAN  
17 GAMING; THE FOLLOWING WEEK, CONTRACT DISPUTE, PROVING UP THE  
18 CONTRACT, AND THE QUANTUM MERUIT, ASSUMING THE COURT ALLOWS  
19 THAT; SO OKAY.

20 ANYTHING ELSE WE NEED TO PUT ON THE RECORD THAT WE  
21 DISCUSSED.

22 \*MR. PHILLIPS: THERE WAS ONE AREA OF TESTIMONY  
23 BESIDES THE 776 ON ATTORNEY-CLIENT, BESIDES THE REBUTTAL TO  
24 THE EEGRA EXPERT. THERE IS THE REBUTTAL TO THE VARIOUS  
25 WITNESSES, THE TRIBAL COUNCIL PEOPLE THAT SHOWED UP.

26 THE COURT: OH, OKAY. ALL RIGHT. THANK YOU.

27 ALL RIGHT, MR. STEIN, GO AHEAD AND TAKE THE WITNESS  
28 STAND AND YOU DON'T NEED TO BE RE-SWORN AS LONG AS YOU CAN

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1 TELL ME THAT YOU UNDERSTAND THAT YOU ARE STILL UNDER OATH.

2 DO YOU UNDERSTAND THAT?

3 THE WITNESS: I UNDERSTAND I'M UNDER OATH AND THAT  
4 I'M NOT SUPPOSED TO POINT.

5 MR. FORDYCE: SO TO PICK BACK UP, AND WE'LL GIVE  
6 THE COURT A MOMENT TO GET REORIENTED IN THE DOCUMENTS.  
7 WE'RE AT, AS WHAT HAS NOW MARKED AS EXHIBIT 1548 ON PAGE --  
8 BATES 0521. THE DOCUMENT IS RESOLUTION 46 AND THAT IS DATED  
9 SEPTEMBER 28, 2003, AND WE HAD FINISHED WITH THE WHEREAS  
10 CLAUSES AND THEN JUST BELOW THE MIDDLE OF THE PAGE OF 0521,  
11 WE WILL START IN WITH THE "THEREFORE" CLAUSES. YOUR HONOR  
12 ARE YOU ON 521.

13 THE COURT: I AM AT RESOLUTION 46, 521, BUT I CAN'T  
14 REMEMBER WHICH NUMBER WE GAVE IT.

15 MR. FORDYCE: OH, 1548, YOUR HONOR.

16 THE COURT: VERY GOOD. THANK YOU. I'M THERE.

17

18 JONATHAN STEIN (CONTINUED),

19

20 \* EXAMINATION

21

22 BY MR. FORDYCE:

23 Q. DO YOU SEE THE "THEREFORE BE IT RESOLVED" CLAUSE IN  
24 THE MIDDLE OF THE PAGE?

25 A. YES.

26 Q. PLEASE READ THAT FOR THE RECORD.

27 A. (READING DOCUMENT) THEREFORE BE IT RESOLVED THAT  
28 THE DEVELOPMENT AGREEMENT ADOPTED BY THIS COUNCIL IN

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1 RESOLUTION NUMBER 10 AND REAFFIRMED AND RATIFIED IN  
2 RESOLUTION 17 AND 37, HEREBY APPROVED AND -- BE APPROVED AND  
3 RATIFIED AS OF TODAY AND THAT THE COUNCIL ACKNOWLEDGES OVER  
4 28 MONTHS OF SATISFACTORY PERFORMANCE OF THE ECONOMIC  
5 DEVELOPMENT TASK BY DEVELOPER.

6 Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF THIS THEREFORE  
7 PROVISION?

8 A. THIS WAS A RESOLUTION WHERE THE TRIBAL COUNCIL  
9 COMMITS AS AN OFFICIAL ACT TO THE TRIBE AND MAKES THE RECORD  
10 OF THEIR APPROVALS OF THE SMDC AGREEMENT AS IT WAS MODIFIED.  
11 SO THEY'RE STATING BOTH AS TO -- AN OFFICIAL ACT OF THE  
12 ORGANIZATION AND THEY'RE ALSO STATING TO SMDC THAT THEY  
13 ADOPTED THE RESOLUTION 10. THEY ADOPTED AS SMDC BY  
14 RESOLUTION 10, THEY THEN REAFFIRMED AND RATIFIED THE SMDC  
15 AGREEMENT IN RESOLUTION 17 AND 37 AND THEN THEY ARE HERE  
16 TODAY DOING IT ONE MORE TIME SO THAT IS A TOTAL OF 1, 2, 3,  
17 4 DIFFERENT APPROVALS OF THE SMDC AGREEMENT BETWEEN MARCH OF  
18 2001 AND SEPTEMBER OF 2003, ABOUT TWO AND A HALF YEARS  
19 LATER.

20 Q. WAS IT IMPORTANT TO SMDC THAT THIS BE INCLUDED IN  
21 RESOLUTION 46.

22 A. YES. SMDC WOULD NOT HAVE CONTINUED WORK AFTER THAT  
23 BECAUSE YOU HAVE TO KNOW THAT YOU HAVE A VALID CONTRACT AND  
24 THAT IT'S BEEN APPROVED BY TRIBAL COUNCIL.

25 Q. IS THERE ANYTHING, AS YOU SIT HERE TODAY, THAT  
26 MAKES YOU QUESTION WHETHER THE TRIBE ACTUALLY INTENDED THIS  
27 TIME OF RESOLUTION 46 TO REAFFIRM AND RATIFY THE RESOLUTIONS  
28 AS NOTED IN THIS --

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1           A.    NO.  EVERYBODY WAS VERY KNOWLEDGEABLE ABOUT THE  
2 HISTORY AND MOST OF THE SAME COUNCILMEN HAD PARTICIPATED IN  
3 ONE OR MORE OF THE PREVIOUS APPROVALS.  THIS ONE WAS DONE  
4 WITH RAE LAMOTHE.  THERE IS OF COURSE ONE DIFFERENCE IN THIS  
5 ONE.

6           Q.    WHAT'S THE DIFFERENCE?

7           A.    IN THIS ONE, THE COUNCIL ACKNOWLEDGES 28 MONTHS OF  
8 SATISFACTORY PERFORMANCE.  THAT MEANS AT 25,000 A MONTH  
9 THEY'RE ACKNOWLEDGING THAT PERFORMANCE OF THE CONTRACT  
10 OCCURRED AND THAT IT WAS SATISFACTORY FOR 28 MONTHS.

11          Q.    OTHER THAN THE EVENTS AND IMMEDIATELY LEADING UP TO  
12 THIS LAWSUIT AND OBVIOUSLY THIS LAWSUIT MOVING FORWARD, AT  
13 THE TIME OF RESOLUTION 46, DID ANY MEMBER OF THE TRIBAL  
14 COUNCIL SUGGEST TO YOU THAT IN FACT THERE HADN'T BEEN 28  
15 MONTHS OF SATISFACTORY PERFORMANCE OF THE ECONOMIC  
16 DEVELOPMENT TASK -- BY SMDC.

17          A.    NO.

18          Q.    AND JUST A QUICK RECAP WHAT SORT OF TASKS WAS SMDC  
19 ENGAGED IN?

20          A.    WE HAD LOOKED AT LOCATIONS FOR A RESERVATION AND  
21 CASINO, IN OTHER WORDS, YOU HAD TO HAVE A RESERVATION TO  
22 HAVE A CASINO IN COMPTON AND SOME OTHER TOWNS BY THAT POINT.  
23 WE HAD BEEN OF COURSE LOOKING FOR INVESTMENTS AND WE HAD  
24 VERY HIGH HOPES THAT WE WERE ACTUALLY GET OUR FIRST  
25 INVESTMENT RIGHT HERE IN 2003.  THAT'S WHAT PROMPTED THE  
26 MODIFICATION AND AMENDMENT FOR 2003, AND THEN WE ALSO  
27 WERE -- WE WENT THROUGH ARCHITECTURAL DRAWINGS FOR THE  
28 CASINO.  WE HAD DEVELOPED A SEPARATE -- WE WERE DEVELOPING A

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1 SEPARATE THEORY TO GO FORWARD WITHOUT FEDERAL RECOGNITION,  
2 IF FEDERAL RECOGNITION PROVED DIFFICULT, MORE DIFFICULT THAN  
3 THOUGHT. AND WE HAD ALSO INCREASED HUGELY THE MEMBERSHIP OF  
4 THE TRIBE WHICH HAD A LOT OF STANDING WITH THE POLITICIANS  
5 THAT WE HAD TO CONVINCED TO GIVE US PERMISSIONS AND, THOSE  
6 AND THE MEMBERSHIP OF THE TRIBE HAD GROWN TREMENDOUSLY IN  
7 THOSE 28 MONTHS.

8 Q. SO YOU FELT THIS WAS -- THAT'S PART OF THE REASON  
9 THAT THIS RESOLUTION WAS NECESSARY?

10 A. YEAH, I THINK THAT THEY WERE VERY HAPPY WITH THE  
11 PERFORMANCE THROUGH THE FIRST 28 MONTHS.

12 Q. LET'S MOVE ON TO THE NEXT "BE IT RESOLVED" THAT THE  
13 AMENDMENT AND MODIFICATION AGREEMENT. CAN YOU READ THAT FOR  
14 THE RECORD, PLEASE.

15 A. (READING:) BE IT RESOLVE FURTHER THAT THE AMENDMENT  
16 AND MODIFICATION AGREEMENT DATED AS OF AUGUST 10, 2003, AND  
17 ATTACHED HERETO AS EXHIBIT A, THE 2003 AMENDMENT, BE AND  
18 HEREBY IS ADOPTED, APPROVED AND AGREED AS AN ACTION OF AND  
19 ON BEHALF OF THIS TRIBAL COUNCIL AND THE TRIBE.

20 Q. WE WILL GO THROUGH WHAT IS EXHIBIT A TO RESOLUTION  
21 46. THAT'S MARKED AS EXHIBIT 1549 BUT JUST GENERALLY PLEASE  
22 EXPLAIN JUST FOR THE RECORD WHAT THE PURPOSE OF THIS BE IT  
23 RESOLVE PROVISION IS?

24 A. THAT WAS TO APPROVE THE AMENDMENT. IN OTHER WORDS,  
25 THE PREVIOUS RESOLUTIONS THAT WE'VE APPROVED THE SMDC  
26 AGREEMENT TIMES, AND WE'RE PROVING IT ONE MORE TIME TODAY  
27 AND THEN THIS AMENDMENT -- THEN THIS CLAUSE WAS THE PURPOSE  
28 OF THAT WAS TO APPROVE THE AMENDMENT TO THE AGREEMENT WHICH

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1 HAD SOME VERY SUBSTANTIAL TERMS AS SMDC WAS GIVING UP A LOT  
2 TO GET THESE APPROVALS.

3 Q. SO THIS BE IT RESOLVE PROVISION WAS IMPORTANT TO  
4 SMDC?

5 A. YES. AS SMDC WOULD NOT HAVE GONE FORWARD WITHOUT  
6 THIS, BUT IT WAS ALSO EVEN MORE IMPORTANT TO THE TRIBE  
7 BECAUSE THEY WERE ASKING SMDC TO CHANGE THE TERMS OF THE  
8 CONTRACT AND THAT OF COURSE TOOK A VARIETY.

9 Q. NOTWITHSTANDING THIS ACTUAL LAWSUIT, ANY REASON TO  
10 BELIEVE EITHER AT THE TIME OF RESOLUTION 46 OR MOVING  
11 FORWARD FROM RESOLUTION 36, THAT THE TRIBAL COUNCIL HAD NOT  
12 INTENDED TO ADOPT THE AMENDMENT AND MODIFICATION, EXHIBIT A?

13 A. NO.

14 Q. MOVE ON TO THE NEXT BE IT RESOLVE. CAN YOU READ  
15 THAT FOR THE RECORD?

16 A. BE IT RESOLVE FURTHER THAT THE DEVELOPMENT  
17 AGREEMENT AS AMENDED AND MODIFIED BY THE 2003 AMENDMENT BE  
18 AND HEREBY IS DECLARED TO BE AN EFFECTIVE VALID AND BONDING  
19 OBLIGATION WITH THE TRIBE AND TRIBAL COUNCIL, AND THE TRIBAL  
20 SECRETARY SAM DUNLAP IS HEREBY AUTHORIZED TO EXECUTE THE  
21 MODIFICATION IN THE FORM SET FORTH IN EXHIBIT A ATTACHED  
22 HERETO ON BEHALF OF THIS TRIBAL COUNCIL AND THE TRIBE.

23 Q. HOW DID YOU INTERPRET THE PHRASE HEREBY DECLARED TO  
24 BE AN EFFECTIVE VALID AND BINDING OBLIGATION OF THE TRIBE  
25 AND TRIBAL COUNCIL.

26 A. WELL, THEY WERE TELLING ME WHAT THIS WAS MEANT WAS  
27 TO TELL SMDC AND TO MAKE IT THE OFFICIAL RECORD OF THE  
28 ORGANIZATION THAT THE DEVELOPMENT AGREEMENT AS AMENDED IN

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1 SEPTEMBER OF 2003 WAS EFFECTIVE VALID AND BINDING, AND WHAT  
2 THAT MEANT IS THAT WHATEVER HAPPENS BEFORE THEN IT WAS  
3 STILL -- THEY'RE ACKNOWLEDGING THAT WHATEVER MIGHT HAVE  
4 HAPPENED, THEY VIEWED THIS AS THEIR BINDING AGREEMENT AND  
5 SMDC COULD RELY ON THAT IN WORKING WITHOUT PAY.

6 Q. WAS THIS AN IMPORTANT PROVISION YOU AND SMDC?

7 A. YES. SMDC WOULD NOT HAVE WORKED IF IT DIDN'T HAVE  
8 THESE BATTERY OF RESOLUTIONS BECAUSE SMDC WAS WORKING ON THE  
9 CUB\* WITHOUT PAYMENT FOR THE SERVICES RENDERED UNTIL  
10 INVESTMENT FUNDS COULD BE GAINED.

11 Q. AS YOU SIT HERE TODAY, ANYTHING COME TO MIND THAT  
12 WOULD SUGGEST THAT THE TRIBE DIDN'T IN FACT INTEND EXHIBIT A  
13 TO BE AN IN FACT TO BE AN EFFECTIVE, VALID, AND BINDING  
14 OBLIGATION OF THE TRIBE?

15 A. NO.

16 Q. NEXT BE IT RESOLVED AT THE BOTTOM OF THE PAGE.  
17 PLEASE READ THAT FOR THE RECORD.

18 A. BE IT RESOLVE FURTHER THAT THE WAIVER OF SOVEREIGN  
19 IMMUNITY CONTAINED IN THE DEVELOPMENT AGREEMENT SHALL APPLY  
20 TO EACH OF THE DEVELOPMENT AGREEMENT SHALL APPLY TO EACH OF  
21 THE DEVELOPMENT AGREEMENT SHALL APPLY TO EACH OF THE  
22 DEVELOPMENT AGREEMENT, THE 2003 AMENDMENT AND THE  
23 DEVELOPMENT AGREEMENT AS AMENDED BY 2003 AMENDMENT.

24 Q. WHAT DOES THIS CASE CLAUSE MEAN?

25 A. WELL, THIS CLAUSE WAS IMPORTANT IN THE EYES OF THE  
26 TRIBAL GENERAL COUNSEL RAE LAMOTHE, LESS SO IN MY EYES, AND  
27 WHAT IT MEANT IS THAT THERE WAS A KNOWING AND EFFECTIVE  
28 WAIVER OF POSSIBLE SOVEREIGN IMMUNITY. IN FACT THE STATE --

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*ROUGH DRAFT*

1 TRIBE DOES NOT HAVE ANY SOVEREIGN IMMUNITY AND A INCORPORATE  
2 ASSOCIATION DOESN'T HAVE ANY SOVEREIGN IMMUNITY. BUT WHAT  
3 THIS SAID IS EACH OF THOSE THREE THINGS, THE SMDC AGREEMENT  
4 THIS AMENDED ADOPTED IN SEPTEMBER OF 2003 AND THEN THE  
5 AGREEMENT PLUS THE AMENDMENT TOGETHER WERE ALL BEING WAIVED,  
6 AND THAT'S KNOWING AND EXPLICIT WAIVER.

7 Q. DO YOU KNOW WHETHER RAE LAMOTHE ADVISED THE TRIBE  
8 ABOUT THE SOVEREIGN IMMUNITY ISSUE?

9 A. SHE TOLD ME THAT SHE -- SHE DID.

10 Q. JUST TO BE CLEAR IN YOUR TESTIMONY, I BELIEVE YOU  
11 SAID THIS. THIS CLAUSE WAS MORE IMPORTANT MAYBE TO THE  
12 TRIBE THAN YOU?

13 A. YES, IT WAS -- WELL, MORE IMPORTANT FOR RAE  
14 LAMOTHE. SHE HAD DONE HER RESEARCH OF WHAT SOVEREIGN  
15 IMMUNITY WAS ABOUT, AND THIS IS, YOU KNOW, CAME ACROSS THE  
16 KNOWING AND EXPLICIT WAIVER PROVISIONS APPLICABLE TO FEDERAL  
17 TRIBES AND WANTED TO HAVE THIS IN HERE BECAUSE IT'S A STATE  
18 TRIBE, BUT WHY NOT THROW IT IN AS BELTS AND SUSPENDERS.

19 Q. OKAY. UNDERSTOOD. JUST WANT TO BE CLEAR ON THAT.  
20 LET'S MOVE ON TO 5022, THE VERY NEXT PAGE, THERE ARE A  
21 COUPLE MORE BE IT RESOLVE CLAUSES.

22 CAN YOU READ THE TOP OF THE PAGE OF BE IT RESOLVE  
23 INTO THE RECORD?

24 A. WELL THERE ARE THREE MORE, NOT TWO. THERE ARE  
25 THREE MORE. AND THESE ARE THE CLAUSES THAT WE'VE SEEN IN  
26 EVERY RESOLUTION. THE FIRST ONE IS BE IT FURTHER RESOLVED.  
27 THAT IS THE INTENTION OF TRIBAL COUNCIL TO BIND THE TRIBE  
28 AND ANY SUCCESSOR OR RELATED ENTITY THEY MAY ACHIEVE,

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1 FEDERAL RECOGNITION AS AN INDIAN TRIBE, AND OR ENTER INTO A  
2 TRIBAL \* COMPACT TO THE DEVELOPMENT AGREEMENT AS AMENDED AND  
3 MODIFIED BY THE MODIFICATION, AS AMENDED AND MODIFIED BY THE  
4 MODIFICATION AS EXECUTED AND SO AMENDED AND MODIFIED.

5 Q OKAY. AND AGAIN THESE THREE I BELIEVE YOU'VE BEEN  
6 QUESTIONED BY MULTIPLE OTHER RESOLUTIONS CONCERNING THESE --  
7 I HESITATE TO CALL THEM BOILER PLATES -- BUT THESE BE IT  
8 RESOLVE PROVISION. THESE ARE STILL IMPORTANT TO SMDC;  
9 CORRECT?

10 A. YEAH. BECAUSE WHAT IT DOES THE THREE OF THESE  
11 TOGETHER, NOT ONLY BOUND THE ORGANIZATION, BUT IT ALSO  
12 CREATED THE ORGANIZATION HAD A DUTY, IF YOU WILL, THAT THEY  
13 WOULD HAVE TO GO FORWARD, SAYING WE'LL DO WHAT WE CAN TO  
14 MAKE SURE THAT IN THE FUTURE WE AGREE THAT THESE RESOLUTIONS  
15 ARE ACCURATE AND THIS LAWSUIT IS EXACTLY THE OPPOSITE OF  
16 THAT. THIS LAWSUIT WAS CONTRADICTORY TO THEIR ACTIONS THAT  
17 THEY SIGNED THEIR NAMES TO IN SEPTEMBER OF 2003.

18 Q. TO YOUR KNOWLEDGE, ANY REASON TO SUGGEST THAT THE  
19 TRIBE DID NOT INTEND TO BE BOUND BY THESE THREE BE IT  
20 RESOLVE PROVISIONS?

21 A. NOT IN 2003. THEY MADE IT VERY CLEAR THAT THEY  
22 INTENDED TO BE BOUND.

23 Q. AND ALONG THOSE LINES, LOOKING TO THE CERTIFICATION  
24 AND THE SIGNATURES, BEFORE GOING TO THE RESOLUTION NUMBER  
25 46, PLEASE EXPLAIN WHAT'S HAPPENED THERE?

26 A. THIS WAS THE CERTIFICATION SAYS THE FOREGOING  
27 RESOLUTION 46 WAS CONSIDERED BY THE TRIBAL COUNCIL OF THE  
28 GABRIELINO-TONGVA TRIBE, AT A DULY CALLED MEETING AND

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1 APPROVED ADOPTED AND ENACTED BY THE TRIBAL WITH A QUORAM  
2 PRESENT AT SUCH MEETING ON SEPTEMBER 28, 2003, AT SANTA  
3 MONICA, CALIFORNIA, AND IT CERTIFIES THAT SAM DUNLAP IS THE  
4 TRIBAL SECRETARY, AND THEN HERE YOU HAVE THE FIVE SIGNATURES  
5 WHICH I RECOGNIZE ONE, ALCALA, VIRGINIA CARMELO, SHIRLEY  
6 MACHADO, SAM DUNLAP, EDGAR PEREZ; AGAIN CINDY ALVITRE IS  
7 MISSING.

8 Q. LETS BE CLEAR. YOU RECOGNIZE THOSE SIGNATURES.  
9 YOU HAVE SEEN THEM BEFORE?

10 A. I WAS THERE WHEN THEY SIGNED THEM.

11 Q. OKAY. AND THE LAST SIGNATURE ON THE PAGE IS WHAT?

12 A. THAT'S SAM DUNLAP AS TRIBAL SECRETARY. THEY  
13 CERTIFY THAT HE'S THE TRIBAL SECRETARY. HE THEN CERTIFIES  
14 AS TRIBAL SECRETARY THAT THEY ARE THE TRIBAL COUNCIL.

15 Q. OKAY. LET'S MOVE ON TO WHAT IS EXHIBIT A. WE  
16 ACTUALLY HAVE IT MARKED AS EXHIBIT 1549, BUT IT IS THE  
17 EXHIBIT A TO RESOLUTION 46. PLEASE -- ARE YOU FAMILIAR WITH  
18 THIS DOCUMENT?

19 A. YEAH. IT SAYS EXHIBIT A ON THE SECOND PAGE, NOT ON  
20 THE FIRST PAGE.

21 Q. IT DOES.

22 A. AND ALL THE RESIST OF THE PAGES. AND THIS WAS THE  
23 AMENDMENT OF MODIFICATION AGREEMENT. WE HAVE TWO COPIES IN  
24 HERE. ONE BECAUSE IT WAS THE EXHIBIT TO THE RESOLUTION AND  
25 THE OTHER BECAUSE IT WAS THE AGREEMENT.

26 Q. SO IS IT SAFE JUST TO GO THROUGH ONE OR THE OTHER,  
27 JUST FOR THE SAKE OF TIME.

28 A. YES.

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1 Q. OKAY. LET'S JUST TAKE 1549, JUST VERY QUICKLY, I  
2 WANT TO DRAW YOUR ATTENTION FIRST TO THE LAST PAGE OF  
3 EXHIBIT A, WHICH IS 0527. IT'S 1, 2, 3, 4. IT'S THE 5TH  
4 PAGE OF THE EXHIBIT. AND DO YOU SEE THREE SIGNATURE BLOCKS  
5 THERE?

6 A. YES.

7 Q. PLEASE EXPLAIN THESE SIGNATURE BLOCKS FOR THE  
8 RECORD.

9 A. WELL, SAM DUNLAP WAS SIGNED AS AUTHORIZED BY  
10 RESOLUTION 46. RAE LAMOTHE SIGNED AS TRIBAL GENERAL  
11 COUNSEL, AND HER TESTIMONY THE OTHER DAY SAID THAT AS MUCH  
12 AND THEN I SIGNED FOR THE SANTA MONICA DEVELOPMENT WHICH IS  
13 THE ADVERSE PARTY TO THE TRIBE IN THIS.

14 Q. SO YOU BELIEVE THIS IS A FULLY EFFECTIVE BINDING  
15 AGREEMENT AND FULLY EXECUTED?

16 A. WELL, THEY WERE ACKNOWLEDGING THAT AND THEY  
17 ACKNOWLEDGE IT FURTHER IN THE AGREEMENT ITSELF.

18 Q. OKAY. LET'S GET TO THE AGREEMENT ITSELF THEN. SO  
19 IN 0523, PLEASE JUST EXPLAIN THIS DOCUMENT FOR THE RECORD.

20 THE COURT: ARE WE GOING TO THE FIRST PAGE OF THE  
21 EXHIBIT.

22 MR. FORDYCE: YES, YOUR HONOR. THAT'S 0523.

23 THE WITNESS: DO YOU WANT IT LINE BY LINE OR -- I'M  
24 SORRY.

25 Q. (BY MR. FORDYCE:) WELL, GO AHEAD AND READ THE --  
26 IF YOU WOULD, INTO THE RECORD THIS AMENDMENT AND  
27 MODIFICATION, FIRST PARAGRAPH.

28 A. THIS AMENDMENT AND MODIFICATION AGREEMENT, THE 2003

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1 AMENDMENT, DATED AS OF AUGUST 10, 2003, BY AND BETWEEN THE  
2 GABRIELINO-TONGVA THE TRIBAL NATION, THE TRIBE, THE  
3 ABORIGINAL TRIBE OF LOS ANGELES BASIN, FORMERLY KNOWN AS THE  
4 SAN GABRIEL BANK OF MISSION INDIANS AND NOW RECOGNIZED BY  
5 LEGISLATIVE RESOLUTION CHAPTER 146 OF THE STATUTES OF 1994  
6 -- I'LL SKIP THE PARENTHETICAL -- ACTING BY AND THROUGH  
7 THEIR LEGAL AND TRADITIONAL GOVERNING BODY, THEIR  
8 DULY-ELECTED GABRIELINO-TONGVA TRIBAL COUNCIL, LOCATED IN  
9 SANTA MONICA, CALIFORNIA, THE TRIBAL COUNCIL AND ST. MONICA  
10 DEVELOPMENT COMPANY, A CALIFORNIA LIMITED LIABILITY COMPANY  
11 HEADQUARTERED IN THE CITY OF SANTA MONICA, DEVELOPER.

12 Q. OKAY. WHAT WAS THE PURPOSE OF THIS?

13 A. WELL, THIS WAS GOING TO AMEND THE TERMS OF THE SMDC  
14 AGREEMENT, AN AMENDMENT, AND ACCORDING TO THE SMDC  
15 AGREEMENT, IT HAD TO BE IN WRITING SO THESE ARE THE VARIOUS  
16 FORMALITIES OF MAKING A WRITTEN AGREEMENT, THE SMDC  
17 AGREEMENT.

18 Q. YES. AND ON THOSE LINES, I'D LIKE TO TAKE YOU  
19 QUICKLY THROUGH THE NEXT "WHEREAS" CLAUSES ON THIS PAGE.

20 WE HAVE A WHEREAS ON MARCH 4, 2001; ANOTHER,  
21 WHEREAS ON MARCH 4, 2001, CONCERNING MARY AGUILAR; ANOTHER  
22 WHEREAS FOR APRIL 17, 2001, RESOLUTION 17, AND THEN A  
23 WHEREAS ON JANUARY 27, 2002 PROVING RESOLUTION 37.

24 HAVE WE SEEN THESE WHEREAS PROVISIONS BEFORE?

25 A. YEAH, THESE ARE VERY SIMILAR OR IDENTICAL TO THE  
26 RESOLUTIONS, AND IT'S AGAIN -- IT RECITES THE VARIOUS  
27 APPROVALS OF THE SMDC AGREEMENT AND STATES THAT THEY'RE TRUE  
28 AND THEN SO THAT THE SIGNATORIES ARE CREATING AN OFFICIAL

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1 RECORD THAT "YES," THESE APPROVALS OCCURRED; SO THERE'S WAS  
2 RESOLUTION 10 APPROVAL; IN MARCH OF 2001, THE SIGNATURE BY  
3 THAT. THEN THE RESOLUTION 17 APPROVAL IN APRIL 2, 2001, SIX  
4 WEEKS LATER, AND THEN THE 2000 -- JANUARY 2, 2002 APPROVAL  
5 AND RESOLUTION 37, AND IN EACH OF THESE APPROVALS, THEY'RE  
6 ACKNOWLEDGING THAT THAT APPROVAL MADE THE SMDC AGREEMENT  
7 VALID, BINDING AND DULY ADOPTED.

8 Q. SO EVEN THOUGH WE'VE SEEN THESE BEFORE, SAFE TO SAY  
9 SAY THEY'RE NOT BOILER LATE. THESE WERE IMPORTANT TO SMDC;  
10 CORRECT?

11 A. THEY ARE ABSOLUTELY CRUCIAL BECAUSE THEY WERE  
12 TELLING ME THAT SOMETHING LIKE THIS TRIAL WOULD NEVER OCCUR.  
13 THEY WERE ACKNOWLEDGING THAT THIS IS VALID AND BINDING, AND  
14 HERE THEY ARE AT TRIAL, SAYING THAT THEY'RE NOT WHEN THEY  
15 APPROVED THEM TIME AND AGAIN AND THEN TOLD ME THAT THOSE  
16 APPROVALS MADE THEM A VALID AND BINDING AGREEMENT; SO IT'S  
17 EXACTLY THE OPPOSITE OF WHAT THEY'RE CLAIMING TODAY.

18 Q. AND, MR. STEIN, JUST -- WE'RE NOT GOING TO  
19 BACKTRACK BUT JUST TO CLEAR IT UP, RESOLUTION 46, WHO  
20 DRAFTED RESOLUTION 46, WHICH IS OUR EXHIBIT 1548, TO YOUR  
21 KNOWLEDGE?

22 A. WELL, IT SAYS IN HERE THAT -- IT SAYS RIGHT IN HERE  
23 THAT RAE LAMOTHE DRAFTED THIS RESOLUTION, AND SHE TESTIFIED  
24 THAT SHE SHE DRAFTED IT --

25 Q. AND IS IT YOUR BELIEF SHE DID?

26 A. YES.

27 Q. SAME QUESTION FOR OUR EXHIBIT 1549. WHO DRAFTED  
28 THIS DOCUMENT?

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1           A.    THE AMENDMENT MODIFICATION AGREEMENT WAS DRAFTED BY  
2   RAE LAMOTHE.

3           Q.    DID SMDC TAKE AN ADVERSARIAL POSITION IN THIS  
4   NEGOITON TO AMEND THE AGREEMENT?

5           A.    YES.   SMDC WAS BEING ASKED TO GIVE UP CERTAIN  
6   THINGS AND SMDC WAS REQUIRING THIS AGREEMENT TO SHOW IN  
7   RETURN FOR GIVING UP THOSE THINGS THAT THE TRIBE WAS  
8   ABSOLUTELY COMMITTED TO MAKING AN OFFICIAL RECORD THAT ALL  
9   THESE APPROVALS HAD CREATED A VALID BINDING AND EFFECTIVE  
10  AGREEMENT AS OF SEPTEMBER 28TH, 2003.

11          Q.    DID YOU DO LEGAL WORK ON BEHALF OF SMDC RELATED TO  
12  OUR EXHIBIT 1549, AUGUST 10, 2003, MODIFICATION?

13          A.    YES.   THERE'S NO MONEY TO HIRE ANOTHER LAWYER.  I'M  
14  A SKILLED LAWYER MYSELF SO I WAS ABLE TO REVIEW RAE'S WORK  
15  ON BEHALF OF SMDC.

16          Q.    OKAY.  LET'S MOVE ON TO PAGE 0524.  THAT'S PAGE  
17  0524, THE SECOND PAGE ON THE EXHIBIT 1549.

18                PLEASE READ THE FIRST WHEREAS CLAUSE AT THE TOP OF  
19  THE PAGE.

20          A.    (READING:)  WHEREAS, THE TRIBE IS SATISFIED WITH  
21  THE AGREEMENT AND BY THIS RESOLUTION SEEKS TO APPROVE AND  
22  RATIFY IT ONCE AGAIN, AND TO RECOGNIZE OVER 28 MONTHS OF  
23  SATISFACTORY PERFORMANCE OF ECONOMIC DEVELOPMENT TASKS BY  
24  DEVELOPER.

25          Q.    PLEASE EXPLAIN.

26          A.    THIS WAS PUTTING THEM ON RECORD IN THE OFFICIAL  
27  RECORDS OF THE TRIBE THAT 28 MONTHS OF WORK AT 25,000 A  
28  MONTH WAS SATISFACTORY IN THEIR EYES, AND THEY SIGNED THIS

*ROUGH DRAFT*

*ROUGH DRAFT*

1 AND THEY HAD THEIR TRIBAL GENERAL COUNSEL SIGN IT.

2 Q. AND WHY WAS THIS IMPORTANT TO YOU -- SMDC?

3 A. IT WAS ESPECIALLY -- IT WAS IMPORTANT BECAUSE SMDC  
4 WAS AGREEING NOT TO TAKE MONEY TO PAY OFF ALL THE AMOUNTS  
5 THAT HAD ACCRUED OVER THOSE 24 MONTHS IMMEDIATELY. IN OTHER  
6 WORDS, SMDC INSTEAD OF SAYING OKAY, A MILLION DOLLARS COMES  
7 IN. I'M GOING TO GRAB THE FIRST 725,000 OF IT IS AGREEING  
8 NOT TO DO THAT, BUT TO RATHER TAKE LESSER AMOUNTS. IN  
9 RETURN WHAT SMDC IS ASKING IS SAYING, I WANT YOU TO  
10 ACKNOWLEDGE THAT YOU DEFINITELY OWE ME \$725,000, AND THAT'S  
11 WHAT THIS "WHEREAS" CLAUSE DOES.

12 Q. AT THE TIME OF THIS AGREEMENT ANY REASON FOR YOU TO  
13 BELIEVE THAT THE TRIBE WASN'T SATISFIED WITH THE AGREEMENT  
14 AND THE 28 MONTHS OF PERFORMANCE?

15 A. NO.

16 Q. AND, AS YOU SIT HERE TODAY, ANYTHING CHANGE THAT  
17 OPINION OTHER THAN LAWSUIT SO --

18 A. NOT THAT I'VE HEARD.

19 Q. OKAY. THE NEXT WHEREAS CLAUSE: WHEREAS, AS A  
20 RESULT OF DEVELOPER'S COMPETENT PERFORMANCE. PLEASE READ  
21 THAT.

22 A. (READING:) WHEREAS AS A RESULT OF DEVELOPER'S  
23 COMPETENT PERFORMANCE OF THE ECONOMIC DEVELOPMENT TASKS, THE  
24 TRIBE IS NEGOTIATING WITH TWO INVESTMENT GROUPS FOR AN  
25 INITIAL INVESTMENT OF OVER \$1 MILLION OF INVESTMENT MONEY,  
26 AS DEFINED IN THE AGREEMENT, TO HELP THE TRIBE SUCCESSFULLY  
27 COMPLETE THE RECOGNITION PROCESS;

28 Q. PLEASE EXPLAIN THIS.

*ROUGH DRAFT*



*ROUGH DRAFT*

1           A.    THIS IS SHOWING THAT IT'S TO SMDC'S CREDIT, IT'S  
2   DOING ITS WORK UNDER THE ECONOMIC DEVELOPMENT TASKS, AND WE  
3   BROUGHT TWO INVESTMENT GROUPS, TWO SERIOUS INVESTMENT GROUPS  
4   TO THE TABLE, NOT THAT WE WERE NECESSARILY GOING TO SUCCEED,  
5   BUT WE'VE GOTTEN THEM TO THE TABLE.

6           Q.    WHY WAS THIS IMPORTANT?

7           A.    BECAUSE NOTHING LIKE THIS IN THE ENTIRE HISTORY OF  
8   THE TRIBE HAD EVER HAPPENED.  THE TRIBE HAD NEVER BEEN  
9   OFFERED ANY INVESTMENT MONEY BY ANYBODY.  THE TRIBE HAD  
10  NEVER HAD A DEVELOPER THAT WAS WILLING TO WORK ON ITS BEHALF  
11  TO TRY TO GET A CASINO AND OR FEDERAL RECOGNITION AND THIS  
12  WAS A REALLY BIG DEAL.

13          Q.    MOVE TO THE NEXT CLAUSE.  WHEREAS --

14                THE COURT:  LET'S TAKE A SHORT BREAK.  I NEED TO  
15  TAKE A BATHROOM BREAK.

16                MR. FORDYCE:  ABSOLUTELY, YOUR HONOR.

17                               (A RECESS WAS TAKEN.)

18

19          Q.    (BY MR. FORDYCE:)  SO I BELIEVE WE LEFT OFF AFTER  
20  THE SECOND WHEREAS CLAUSE, MR. STEIN.  SO PLEASE READ THE  
21  THIRD WHEREAS CLAUSE ON PAGE -- BATES 0524 INTO THE RECORD?

22          A.    (READING:)  WHEREAS, UNDER THE AGREEMENT DEVELOPER  
23  IS DUE TO BE PAID \$25,000 PER MONTH, FROM FEBRUARY 1, 2001,  
24  THROUGH THE PRESENT, FOR A TOTAL OF APPROXIMATELY \$725,000  
25  TO DATE, FROM THE INVESTMENT MONEY, AND THIS WOULD BE TAKE  
26  UP A LARGE PORTION OF THE INVESTMENT MONEY THAT EACH  
27  INVESTMENT GROUP HAS DISCUSSED INVESTING WITH THE TRIBE;

28          Q.    PLEASE EXPLAIN WHAT YOU UNDERSTAND THE PURPOSE OF

*ROUGH DRAFT*

*ROUGH DRAFT*

1 THIS "WHEREAS" CLAUSE TO BE?

2 A. THEY'RE ACKNOWLEDGING THAT 725,000 WAS OWED ON THE  
3 ONE HAND AND SHOULD BE PAID, BUT THEY WERE ALSO NOTING  
4 NOTING THAT, YOU KNOW, OUT OF A MILLION-DOLLAR INVESTMENT,  
5 THAT WOULD BE THE MAJORITY OF IT.

6 Q. AND WAS THIS AN IMPORTANT CLAUSE FOR YOU AND SMDC?

7 A. YES. IT PUT INTO THE OFFICIAL RECORDS OF THE TRIBE  
8 THAT THEY ACKNOWLEDGED A DEBT OF 725,000 THROUGH THE DATE  
9 THROUGH SEPTEMBER 2003 AND THAT THEN THEY GO FURTHER IN  
10 LATER PARAGRAPHS.

11 Q. WAS IT YOUR BELIEF THAT WITH THIS WHEREAS CLAUSE  
12 THE TRIBE WAS ACKNOWLEDGING THE FEES OF SMDC?

13 A. YES.

14 Q. AND OBVIOUSLY THIS IS AN IMPORTANT CLAUSE FOR SMDC.  
15 ANY REASON AS YOU SIT TODAY TO THINK THERE ARE ANY  
16 INACCURACIES IN THIS WHEREAS CLAUSE?

17 A. NO.

18 THE COURT: THERE ARE ANY INACCURACIES --

19 MR. FORDYCE: INACCURACIES. CORRECT, YOUR HONOR.  
20 I'M SORRY.

21 THE COURT: OKAY.

22 Q. (BY MR. FORDYCE:) NEXT WHEREAS CLAUSE, THE FOURTH  
23 ON THE PAGE. PLEASE READ THAT INTO THE RECORD.

24 A. (READING:) WHEREAS, THE TRIBE COUNCIL HAS  
25 REQUESTED THAT DEVELOPER DEFER PAYMENT OF MOST OF THE  
26 MONTHLY AMOUNTS WHICH ACCRUED IN THE PAST 28 MONTHS, TO  
27 ALLOW THE INVESTMENT MONEY TO BE USED FOR OTHER PURPOSES.

28 Q. WHAT WAS THE PURPOSE, TO YOUR UNDERSTANDING, OF

*ROUGH DRAFT*

*ROUGH DRAFT*

1 THIS WHEREAS CLAUSE?

2 A. THAT THE TRIBE WAS HAPPY TO ACKNOWLEDGE THE DEBT OF  
3 725,000 AS BEING DUE BUT THEY SAID HEY DON'T EXERCISE ALL  
4 YOUR CONTRACT RIGHTS TO TAKE THE FULL 725 OUT OF THE 1  
5 MILLION DOLLARS, AND SMDC AGREES TO THAT LATER IN THE  
6 AGREEMENT.

7 Q. OKAY. AND WHY WAS THIS IMPORTANT TO INCLUDE THIS  
8 WHEREAS CLAUSE?

9 A. BECAUSE IT SHOWED THAT THAT AMOUNT HAD ACCRUED IN  
10 THE LAST 28 MONTHS. THEY WERE ACKNOWLEDGING THE TERMS OF  
11 THE CONTRACT, AND THEY'RE SAYING THAT THAT'S OWED UNDER THE  
12 CONTRACT FOR 28 MONTHS WORK BUT THEN THEY'RE MAKING THE  
13 REQUEST AS SMDC.

14 Q. DID YOU HAVE ANY BELIEF THAT THERE WAS ANY  
15 INACCURACIES IN THIS WHEREAS CLASS AT THE TIME OF  
16 RESOLUTION --

17 A. NO. IT WAS TRUE WHEN THIS WAS --

18 Q. DO YOU STILL BELIEVE IT'S TRUE NOW?

19 A. YES, I DO.

20 Q. LET'S MOVE TO THE NEXT WHEREAS CLAUSE, WHEREAS,  
21 DEVELOPER WISHES TO MODIFY.

22 A. (READING:) WHEREAS, DEVELOPER WISHES TO MODIFY THE  
23 AGREEMENT TO PROVIDE THE TERM CLASS III BE REPLACED BY THE  
24 TERM CLASS II OR III, TO TAKE ACCOUNT OF THE POSSIBILITY  
25 THAT THE TRIBE MAY ENTER INTO A GAMING COMPACT ALLOWING  
26 CLASS II GAMING DEVICES, BUT NOT CLASS III GAMING DEVICES.

27 THE COURT: CAN I STOP YOU FOR A MINUTE?

28 ARE WE GOING TO READ EVERY SINGLE WHEREAS CLAUSE ON

*ROUGH DRAFT*

*ROUGH DRAFT*

1 EVERY SINGLE ONE OF THESE AGREEMENTS BECAUSE I CAN READ THEM  
2 MYSELF. IF MR. STEIN GIVES HIS SORT OF THIS IS MY  
3 UNDERSTANDING OF WHAT IT MEANS, THAT'S FINE. I'M HAPPY WITH  
4 THAT, BUT SOME OF THEM DON'T SEEM TO BE AS --

5 MR. FORDYCE: YOUR HONOR --

6 THE COURT: PERTINENT ONES. MAYBE THE PRIOR ONES I  
7 COULD SEE, BUT WHETHER SOMETHING IS A CLASS II OR CLASS III  
8 GAMING DEVICES -- I DON'T KNOW IF WE REALLY NEED TO GET INTO  
9 MUCH DETAIL BUT --

10 MR. FORDYCE: YOUR HONOR, SOME OF THESE WILL GO  
11 FASTER THAN OTHERS. I MEAN, OUR THOUGHT AS MUCH AS ANYTHING  
12 ELSE TO MAKE A CLEAN RECORD, BUT I CAN SPEED -- FOR EXAMPLE,  
13 THIS CLAUSE, I CAN DEFINITELY SPEED UP BECAUSE MR. STEIN  
14 ADDRESSED IT BEFORE.

15 THE COURT: RIGHT.

16 THE WITNESS: WE JUST HAVE TWO MORE.

17 MR. FORDYCE: YEAH. AND MY CONCERN IS REALLY IS  
18 MR. STEIN'S EXPLANATION OF WHAT WAS ACTUALLY HAPPENING ON  
19 THE RECORD; SO I'LL TRY AND SPEED IT UP, AND THIS IS, I  
20 THINK, YOUR HONOR WILL BE GLAD TO KNOW IT'S ACTUALLY THE  
21 LAST OF THE SMDC DOCUMENTS THAT WE'RE GOING TO LOOK AT SO  
22 WE'RE ACTUALLY NEARLY DONE WITH THIS AREA.

23 THE COURT: OKAY. I'M JUST CONCERNED THAT YOU --

24 MR. FORDYCE: -- A LOT OF TIME. UNDERSTOOD.

25 Q. (BY MR. FORDYCE:) SO, MR. STEIN, JUST TO MOVE  
26 THROUGH THIS QUICKLY BECAUSE YOU ACTUALLY HAVE GIVEN A VERY  
27 CLEAR EXPLICATION OF THE CLASS II AND CLASS III, WHEREAS  
28 CLAUSE. IS THERE ANYTHING DIFFERENT IN THIS WHEREAS CLAUSE

*ROUGH DRAFT*

*ROUGH DRAFT*

1 FROM YOUR PREVIOUS TESTIMONY?

2 A. NO.

3 Q. OKAY. AND AGAIN THIS WAS AN IMPORTANT CLAUSE;  
4 CORRECT?

5 A. YES. IT EXPANDED THE RIGHTS TO COLLECT REVENUES IN  
6 THE CASE THAT I -- CASINO INSTALLED OKLAHOMA-STYLE SLOT  
7 MACHINES, CLASS II SLOT MACHINES, NOT JUST CLASS III SLOT  
8 MACHINES. THEY TRY TO BE MORE ADVANCED, LAS VEGAS-STYLE.

9 Q. UNDERSTOOD. THE NEXT WHEREAS CLAUSE, MR. STEIN,  
10 THIS IS FAIRLY SIMILAR TO OTHER WHEREAS CLAUSES WE'VE SEEN  
11 BUT WITH DIFFERENT DATES.

12 CAN YOU PLEASE EXPLAIN THIS.

13 A. WELL, THIS WHEREAS CLAUSE RECITES THAT THE TRIBAL  
14 GENERAL COUNSEL REVIEWED THE AGREEMENT AND OPINED TO THE  
15 TRIBAL COUNCIL. THIS MAKES AN ACTUAL RECORD OF WHAT RAE  
16 LAMOTHE SAID TO THE TRIBAL COUNCIL AND HER LEGAL OPINION  
17 THAT THE TRIBAL COUNCIL THAT THE AGREEMENT IS VALID AND  
18 BINDING AND THE 2003 AS ITS OWN THREE-PAGE AGREEMENT WAS  
19 ALSO VALID AND BINDING, AND THAT WHEN THE 2003 AMENDMENT WAS  
20 ADOPTED THAT THAT, PLUS THE AGREEMENT TOGETHER, WOULD BE  
21 VALID AND BINDING IN ACCORDANCE WITH THE TERMS. OKAY. SO  
22 SHE'S STATING HER ACTUAL -- THE ACTUAL LEGAL DISCUSSIONS AND  
23 LEGAL ADVICE THAT SHE'S GIVEN TO HER THOUGHTS.

24 Q. AT THE TIME YOU ENTERED INTO THIS AGREEMENT, SIGNED  
25 AUGUST 10, 2003, ANY REASON TO BELIEVE THAT MS. LAMOTHE HAD  
26 NOT REVIEWED THE AGREEMENT?

27 A. NO, NO. SHE HAD TOLD ME THAT SHE HAD.

28 Q. DID YOU BELIEVE THIS WAS AN ACCURATE STATEMENT,

*ROUGH DRAFT*

*ROUGH DRAFT*

1 THIS WHEREAS CLAUSE?

2 A. THIS WAS TRUE ON AUGUST 10TH OF 2003.

3 Q. DO YOU STILL BELIEVE IT TO BE TRUE TODAY?

4 A. YES, I BELIEVE IT'S TRUE TODAY.

5 Q. ALL RIGHT.AND I BELIEVE YOU'VE EXPLAINED THE  
6 IMPORTANCE OF IT.

7 WE'LL SKIP THE NEXT "WHEREAS" BECAUSE IT'S JUST THE  
8 THE MUTUAL DESIRE TO MAKE THE FOLLOWING AMENDMENTS. OR  
9 EXPLAIN WHY THAT'S IMPORTANT.

10 THE COURT: WHAT PAGE ARE WE ON?

11 MR. FORDYCE: THIS IS STILL 0524, YOUR HONOR.

12 THE WITNESS: THE LAST WHEREAS CLAUSE IS VERY SHORT  
13 AND IT SAYS (READING:) WHEREAS, TRIBAL COUNCIL AND  
14 DEVELOPER MUTUALLY DESIRE TO MAKE THE AMENDMENTS AND  
15 MODIFICATIONS TO THE EXISTING AGREEMENT.

16 Q. (BY MR. FORDYCE:) AND THE PURPOSE OF THAT?

17 A. WELL, THE SMDC AGREEMENT WAS A VERY FORMAL  
18 AGREEMENT. I CALLED IT LIKE A TANK AS COMPARED TO AN  
19 OFFICER'S SIDEARM; SO WE VERY MUCH RESPECTED THAT ALL THE --  
20 ANY CHANGE TO IT HAD TO BE IN WRITING, AND THIS ONE SAID  
21 THAT THEY WANTED TO MAKE AMENDMENTS AND MODIFICATIONS TO THE  
22 SMDC AGREEMENT. THAT OF COURSE WAS A WRITING SIGNED BY THE  
23 PARTIES.

24 Q. AND THEN THE FIRST, NOW, THEREFORE AT THE BOTTOM OF  
25 THE PAGE 0524?

26 A. (READING:) NOW, THEREFORE, PURSUANT TO SECTION 14  
27 OF THE SMDC AGREEMENT, AND IN CONSIDERATIONS OF THESE  
28 PREMISES AND THE PROMISES, COVENANTS, AGREEMENTS AND

*ROUGH DRAFT*

*ROUGH DRAFT*

1 ACKNOWLEDGES CONTAINED IN THIS AGREEMENT, THE TRIBAL  
2 COUNCIL, ON ITS OWN BEHALF AND ON BEHALF OF THE TRIBE, AND  
3 THE DEVELOPER AGREE TO THE FOLLOWING MODIFICATIONS TO THE  
4 FOLLOWING SECTIONS OF THE AGREEMENT.

5 Q. DO WE HAVE TO CAP WRA TO A NOW THEREFORE PROVISION  
6 LIKE THIS IN PREVIOUS DOCUMENTS TO WHICH YOU TESTIFIED AND  
7 JUST PURSUANT TO SECTION 14 OF THE AGREEMENT FOR THE RECORD  
8 THAT'S BATES 0492 OF OUR EXHIBIT 569, AND 14 IS THE SECTION  
9 ENTITLED ENTIRE AGREEMENT. CAN YOU JUST TAKE A QUICK LOOK  
10 AND CONFIRM THAT IS CORRECT.

11 A. YEAH. ON PAGE 492 SECTION 14 OF THE SMDC AGREEMENT  
12 STATES NO MODIFICATIONS OF THIS AGREEMENT SHALL BE VALID  
13 UNLESS MADE IN WRITING AND SIGNED BY THE PARTIES.

14 Q. AND WAS THIS YOUR INTENT WITH THE AMENDMENT FROM  
15 AUGUST 10, 2003, THE NOW THEREAFTER PROVISION YOU JUST READ?

16 A. OH, IT WAS ACTUALLY THE TRIBAL GENERAL COUNSEL  
17 INTENT. SHE WROTE IT AND SHE REFERENCED SECTION 14 IN THE  
18 AGREEMENT TO INDICATE THAT THIS WAS A WRITING THAT AMENDED  
19 THE AGREEMENT.

20 Q. DID YOU AND SMDC HAVE ANY ISSUE OF ANY SORT WITH  
21 THIS THEREFORE PROVISION?

22 A. NO. IT'S THE ONLY WAY TO AMEND, YOU KNOW, A  
23 TANK-LIKE AGREEMENT LIKE THAT.

24 Q. LET'S GO TO SECTION ONE. THERE ARE CERTAIN  
25 PROVISIONS THAT I'D LIKE TO DRAW YOUR ATTENTION TO. THIS IS  
26 BATES 0525? PROVISION B UNDER SECTION 1, PLEASE READ THAT.

27 A. B THE PARTIES AGREE THAT DEVELOPER WILL BE PAID FOR  
28 THE CRUDE MONTHLY AMOUNTS FOR FEBRUARY 2001 THROUGH JULY 15,

*ROUGH DRAFT*

*ROUGH DRAFT*

1 2003, ON THE FOLLOWING DEFERRED BASIS. NO MONTHLY AMOUNTS  
2 WILL BE PAID FROM INVESTMENT MONEY RECEIVED IN CALENDAR  
3 2003. 250,000 WILL BE PAID FROM INVESTMENT MONEY RECEIVED  
4 AFTER JUNE OF 2004 AND THE BALANCE WILL BE PAID BY  
5 INVESTMENT MONEY RECEIVED AFTER JUNE 2005.

6 Q. PLEASE EXPLAIN WHAT HAPPENING IN THIS PROVISION?

7 A. WELL THIS IS WHAT SMDC WAS GIVING UP. IT WAS  
8 MAKING A SCHEDULE OF WHEN THE MONTHLY AMOUNTS THAT WERE DUE  
9 THE SECOND THAT INVESTMENT MONEY CAME IN THE DOOR, IT'S A  
10 SLOWER SCHEDULE SO THAT THE MONEY THAT CAME IN THE DOOR  
11 COULD BE USED TO ADVANCE THE FEDERAL RECOGNITION AND THE  
12 CASINO PROJECT.

13 Q. AND I THINK YOU JUST EXPLAINED QUITE WELL BUT WHY  
14 THIS IMPORTANT?

15 A. THIS IS IMPORTANT TO THE TRIBE, AND SMDC ONLY ASKED  
16 THAT THE TRIBE'S -- THE SMDC ONLY ASKED IN RETURN FOR THIS  
17 AGREEMENT THAT IT GET THE TRIBE TO ACKNOWLEDGE A \$725,000  
18 WAS OWED AND THAT PERFORMANCE WAS FINE FOR 28 MONTHS AND  
19 THAT THESE APPROVALS THAT HAD OCCUR IN THE PAST WERE ALL  
20 VALID AND BINDING OBLIGATIONS.

21 Q. AND ANYTHING TO BELIEVE THAT THERE WAS ANYTHING  
22 INACCURATE IN THE SECTION 1-D?

23 A. NO. INVESTMENT MONEY ACTUALLY CAME IN, IN 2006 SO  
24 THIS DEFERRED MECHANISM WAS FOLLOWED.

25 Q. SO SMDC DID SEE SOME MONEY?

26 A. ONLY IN 2006.

27 Q. AND WE'LL GET TO THAT. SECTION 2. CLASS III,  
28 CLASS II, CLASS III, THAT FIRST PROVISION SECTION 2-A.

*ROUGH DRAFT*



*ROUGH DRAFT*

1 PLEASE EXPLAIN THIS.

2 A. THIS WAS THE -- THIS WAS MODIFYING THE TERMS OF THE  
3 SMDC AGREEMENT SO THAT WHERE IT SAID CLASS III SLOT  
4 MACHINES, IN OTHER WORDS THE TYPE YOU PLAY IN LAS VEGAS,  
5 WOULD BE CHANGED TO CLASS II OR CLASS III WHICH ALLOWED THE  
6 TYPES THAT YOU PLAY IN OKLAHOMA TO BE USED, AND THE THOUGHT  
7 WAS THAT THE TRIBE MIGHT BE ABLE TO GET INFERIOR-TYPE OF  
8 GAMING BASED ON STATE RECOGNITION AND LEAVE THE COMPETITIVE  
9 ADVANTAGE WITH THE FEDERALLY RECOGNIZED TRIBES AND THAT THIS  
10 MIGHT BE A SUCCESSFUL APPROACH TO HAVING GAMING IN LOS  
11 ANGELES.

12 Q. DOES THIS COMPORT SECTION 2-A WITH YOUR PREVIOUS  
13 EXPLANATIONS OF CLASS II AND CLASS III?

14 A. YES. RAE WENT THROUGH THE AGREEMENT AND FOUND ALL  
15 THE PLACES, AND AS FAR AS I COULD SEE, SHE WAS CORRECT.

16 Q. TO BE CLEAR, WHO DRAFTED THIS DOCUMENT?

17 A. RAE.

18 Q. AND YOU NEGOTIATED THIS DOCUMENT ON BEHALF OF SMDC;  
19 CORRECT?

20 A. RIGHT. SMDC WAS THE ADVERSE PARTY THAT WAS GIVING  
21 UP SOME RIGHTS AND GETTING OTHERS.

22 Q. OKAY. LET'S MOVE ON TO PAGE 0526, SECTION 3, TERM  
23 OF AGREEMENT EXTENDED. PLEASE READ THIS.

24 A. 38, THE REFERENCE IS SECTION 1 E 2, THE TERM OF  
25 SERVICE SHALL BE CHANGED OF 2007 THROUGH JANUARY 2, 2011,  
26 WHICH I'LL EXTEND THE TERM OF THE AGREEMENT BY FOUR YEARS  
27 UNLESS SOONER TERMINATED.

28 Q. PLEASE EXPLAIN THIS.

*ROUGH DRAFT*

*ROUGH DRAFT*

1           A.    WELL, THE ORIGINAL SMDC AGREEMENT OR BY 2003 WAS  
2 DUE TO EXPIRE IN 2007, UNLESS SOONER TERMINATED. THIS MADE  
3 IT FOUR YEARS LONGER WHICH WAS TO THE BENEFIT OF BOTH  
4 PARTIES IN THAT IT WOULD MEAN THAT THEY WOULD GET MORE FREE  
5 LABOR THROUGH -- FOR ANOTHER FOUR YEARS, AND IT GAVE SMDC  
6 MORE TIME TO FIND INVESTMENT FUNDS.

7           Q.    I THINK YOU JUST COMPLAINED WHY THAT WAS IMPORTANT.  
8 ANY REASON TO BELIEVE THAT THERE ARE ANY INACCURACIES.

9           A.    NO. AND IT DOESN'T MATTER BECAUSE THEY TERMINATED  
10 THE SMDC AGREEMENT IN OCTOBER OF 2006 BEFORE THE EXPIRATION  
11 OF THE ORIGINAL TERM.

12          Q.    WHICH WAS THEIR RIGHT TO YOUR UNDERSTANDING?

13          A.    YES. EITHER PARTY COULD TERMINATE IT VERY EASILY.

14          Q.    OKAY. SECTION 4, REPRESENTATIONS AND WARRANTIES.  
15 PLEASE READ THIS.

16          A.    ALL REPRESENTATION OF WARRANTIES CONTAIN IN SECTION  
17 6 OF THE AGREEMENT ARE REPEATEDLY HEREBY AS OF AUGUST 10,  
18 2003, AS IT FIRST MADE ON THIS DATE AND APPLIED TO THE  
19 AGREEMENT AND THIS 2003 AMENDMENT?

20          Q.    PLEASE EXPLAIN THIS.

21          A.    WELL, THIS IS VERY IMPORTANT BECAUSE RAE LAMOTHE  
22 SIGNED THIS AS TRIBAL GENERAL COUNSEL AND ALL THE PROVISIONS  
23 OF THE SMDC AGREEMENT; THAT LIMITED SMDC'S LIABILITY THAT  
24 MADE IT CLEAR THAT THERE WAS NO ATTORNEY-CLIENT  
25 RELATIONSHIP; THAT SMDC WAS AN INDEPENDENT CONTRACTOR; THAT  
26 THERE WAS NO FIDUCIARY DUTY -- ALL OF THOSE THINGS WERE  
27 BROUGHT FORWARD TO AUGUST OF 2003 WHEN IN A MANNER THAT HAD  
28 BEEN DRAFTED BY THE TRIBAL GENERAL COUNSEL AND SIGNED BY THE

*ROUGH DRAFT*

*ROUGH DRAFT*

1 TRIBAL GENERAL COUNSEL.

2 MS. IBARRA: I'M SORRY. WHERE ARE YOU?

3 MR. FORDYCE: THIS IS ON BATES 0526, SECTION 4.

4 AND IT REFERENCES FOR, JUST FOR THE COURT, IF THE  
5 COURT REPORTER WOULD LIKE TO REVIEW, SECTION 6 OF THE  
6 AGREEMENT AND THAT WOULD BE FOUND ON BATES 0488.

7 Q. (BY MR. FORDYCE:) MR. STEIN, CAN YOU TAKE A QUICK  
8 LOOK AND JUST CONFIRM THAT'S CORRECT.

9 A. ON PAGE 488, TRIBAL COUNCIL REPRESENTED ONE THAT  
10 CAN CERTIFY AND THEY ARE CERTIFYING --

11 Q. AND THIS IS SECTION 6 THAT'S BEING REFERRED TO.

12 A. YES. AND I'M LOOKING FOR THE -- LIKE SECTION.  
13 LIKE SECTION I IS -- THE SIGNATORIES BELOW IS DULY  
14 AUTHORIZED AND EMPOWERED TO EXECUTE AND DELIVER THIS  
15 AGREEMENT ON BEHALF OF THE COUNCIL, AND WHEN EXECUTED, THE  
16 AGREEMENT SHALL BE LEGALLY BINDING AND \*ENFORCEABLE  
17 OBLIGATIONS OF THE TRIAL. THEY'RE SAYING EXACTLY THE  
18 OPPOSITE TODAY AS WHAT THEY SAID IN 2003.

19 Q. SO IS THIS AN IMPORTANT PROVISION TO INCLUDE IN OUR  
20 AUGUST 2003 AMENDMENT?

21 A. VERY MUCH TRUE.

22 Q. SO WAS THIS AN IMPORTANT PROVISION TO INCLUDE IN  
23 OUR AUGUST 2003 AMENDMENT?

24 A. VERY MUCH TRUE.

25 Q. LET'S MOVE --

26 A. AND BY SAYING THAT IS BINDING AND ENFORCEABLE  
27 OBLIGATION, THAT MEANT ALL THE TERMS IN HERE, THE TERMS AND  
28 CONDITIONS, INCLUDING LIMITATIONS AND LIABILITY. THE TERMS

*ROUGH DRAFT*

*ROUGH DRAFT*

1 AND CONDITIONS SAYING THERE'S NO FIDUCIARY DUTY, EVEN IF  
2 YOU'RE AN OFFICER THE TERM SAYING THERE'S NO ATTORNEY-CLIENT  
3 AGREEMENT, THEY'RE AFFIRMING THAT IN WRITING AND MAKING IT,  
4 REPEATING AS OF AUGUST 10, 2003.

5 Q. LET'S MOVE ME TO SECTION 6 AND GIVE ADVICE. WE'VE  
6 LOOKED AT SECTION 5, AND I BELIEVE YOU HAVE EXPLAINED THAT  
7 IN SOME DEPTH; IS THAT CORRECT?

8 A. YES.

9 Q. OKAY. LET'S MOVE TO SECTION 6, LEGAL ADVISE.  
10 PLEASE READ THIS.

11 A. WELL, THE LANGUAGE IN SECTION 23 OF THE AGREEMENT  
12 SHALL BE MODIFIED BY ADDING THE FOLLOWING SENTENCE TO THE  
13 END OF THIS SECTION: THE TRIBAL COUNCIL FURTHER  
14 ACKNOWLEDGES THAT THE TRIBAL GENERAL COUNSEL RAE LAMOTHE HAS  
15 REVIEWED THE AGREEMENT AS AMENDED AND FOUND THAT HIS VALID,  
16 BINDING AND \*ENFORCEABLE OBLIGATION TRIBAL COUNCIL ON ITS  
17 OWN BEHALF AND ON BEHALF OF THE TRIBE. IN ADDITION, TRIBAL  
18 GENERAL COUNSEL HAS DRAFTED THIS 2003 AMENDMENT AND FOUND  
19 THAT IT IS THE VALID, BINDING, AND ENFORCEABLE OBLIGATION OF  
20 TRIBAL COUNCIL ON ITS OWN BEHALF AND BEHALF OF THE TRIBE,  
21 AND IN ADDITION THE AGREEMENTS AS AMENDED BY THE 2003  
22 AMENDMENT HAD FOUND THAT IT IS THE VALID BINDING AND  
23 ENFORCEABLE OBLIGATION OF THE TRIBAL COUNCIL ON ITS OWN  
24 BEHALF AND ON BEHALF OF THE TRIBE.

25 Q. THIS IS MODIFYING THE SECTION 23 LEGAL ADVICE ON  
26 THE ORIGINAL AGREEMENT ON BATES 0494; IS THAT CORRECT?

27 A. YES.

28 Q. PLEASE EXPLAIN SECTION 6 AS YOU'VE JUST READ IT ON

*ROUGH DRAFT*

*ROUGH DRAFT*

1 BATES 0526?

2 A. WELL, WHAT HAPPENED IS THE ORIGINAL AGREEMENT,  
3 THERE WAS NO ATTORNEY REPRESENTING THE TRIBE WHEN THEY  
4 SIGNED THE ORIGINAL AGREEMENT IN MARCH 2001; SO THE LEGAL  
5 ADVISE SECTION ONLY SAYS THAT THE PARTY IS HERETO  
6 ACKNOWLEDGE THAT THEY HAD BEEN ADVISED AND ENCOURAGE TO SEEK  
7 LEGAL ADVICE FROM INDEPENDENT COUNSEL AND GIVEN THE  
8 OPPORTUNITY TO DO SO; SO THEY WERE GIVEN THE OPPORTUNITY AND  
9 THEY WERE ENCOURAGED TO SEEK INDEPENDENT COUNSEL, BUT THEY  
10 DIDN'T HAVE -- WHAT THIS ONE ADDS IS SAYING, OKAY, WELL, IN  
11 2003 WHEN THEY AFFIRMED AND RATIFIED EVERYTHING ABOUT THE  
12 AGREEMENT, THEY HAD RAE LAMOTHE AS TRIBAL GENERAL COUNSEL,  
13 NUMBER ONE; AND NUMBER 2, SHE SAID THAT THE SMDC AGREEMENT  
14 WAS VALID AND BINDING AND THAT THE AMENDMENT WAS VALID AND  
15 BINDING AND THEN FINALLY THE AGREEMENT AS AMENDED WAS VALID  
16 AND BINDING SO \*PROVIDED ALL FORWARD TO SEPTEMBER OF 2003.

17 Q. SO IN YOUR MIND DID THIS SECTION SIX AMENDMENT  
18 CLEAR UP ANY POSSIBLE -- I'M NOT SAYING THERE WAS, BUT CLEAR  
19 UP ANY POSSIBLE AMBIGUITY WITH THE ORIGINAL SECTION 23 OF  
20 THE SMDC AGREEMENT?

21 A. YES. AND NOT ONLY CLEARED UP THE AMBIGUITY BUT IT  
22 WAS VERY IMPORTANT TO SMDC TO GET THAT AMBIGUITY CLEARED UP  
23 BECAUSE SMDC WAS ASKED TO DEFER AMOUNTS THAT WOULD OTHERWISE  
24 BE PAID.

25 Q. DID YOU HAVE ANY REASON AT THE TIME YOU SIGNED  
26 THIS, TO BELIEVE THAT MS. LAMOTHE HAD NOT REVIEWED THE  
27 AGREEMENT AS STATED IN THIS SECTION 6 MODIFICATION?

28 A. NO.

*ROUGH DRAFT*

*ROUGH DRAFT*

1 Q. DOES ANYTHING CHANGE THAT AS YOU SIT HERE TODAY?

2 A. NO.

3 Q. SECTION 7 AT THE BOTTOM OF PAGE 0526, APPROVAL AND  
4 RATIFICATION OF AGREEMENT. PLEASE READ THIS.

5 A. OKAY. WHAT THIS IS -- IS THIS IS SORT OF THE LAST  
6 CRESCENDO IF YOU WILL, TO A LONG PIECE AND THAT SAYS  
7 (READING:) A TRIBAL COUNCIL ON BEHALF OF THE TRIBE HAS  
8 REVIEWED THE AGREEMENT AS AMENDED AND HEREBY APPROVE AND  
9 RATIFY THE AGREEMENT AS AMENDED. THE TRIBAL COUNCIL ON  
10 BEHALF OF THE TRIBE AGREES WITH DEVELOPERS PERFORMED ALL THE  
11 TERMS AND CONDITIONS OF THE AGREEMENT THROUGH THE DATE OF  
12 THE 2003 AMENDMENT.

13 Q. WHY WAS THIS IMPORTANT?

14 A. IT SAYS THAT THEY -- IT MAKES IT THE OFFICIAL  
15 RECORD OF THE TRIBE THAT THEY HAD RECEIVED GOOD PERFORMANCE  
16 THROUGH SEPTEMBER OF 2003 OR AUGUST 2ND, 2003, AND THEY ALSO  
17 ARE APPROVING AND RATIFYING THE SMDC AGREEMENT AS AMENDED SO  
18 WHATEVER ELSE MAY BE GOING ON, WHATEVER THEY MIGHT BE SAYING  
19 TODAY, THEY'RE MAKING IT THE RECORD OF THE TRIBE THAT ON  
20 SEPTEMBER 28, 2003, IT WAS A VALID AND BONDING AGREEMENT.

21 Q. DO YOU SEE ANYTHING AMBIGUOUS OF THE LANGUAGE OF  
22 SECTION 7?

23 A. NO.

24 Q. DO YOU SEE ANYTHING INACCURATE TO YOUR BELIEF IN  
25 SECTION 7?

26 A. NO.

27 Q. OKAY. AND WE ACTUALLY LOOKED AT THE LAST PAGE OF  
28 THIS EARLIER WHICH IS BATES 0527, AND YOU DO SEE THE THREE

*ROUGH DRAFT*

*ROUGH DRAFT*

1 SIGNATURES YOU TESTIFIED TO; CORRECT?

2 A. YES.

3 Q. WERE YOU PRESENT WHEN THE DOCUMENT WAS SIGNED WITH  
4 MR. DUNLAP?

5 A. YES.

6 Q. OR WERE YOU PRESENT WHEN IT WAS SIGNED BY  
7 MS. LAMOTHE?

8 A. YES.

9 Q. OKAY. WE CAN MOVE ON TO A DIFFERENT AREA OF YOUR  
10 TESTIMONY NOW. OKAY.

11 SO, MR. STEIN I'M GOING TO TRY NOT TO JUMP AROUND  
12 TOO MUCH THERE, BUT THERE WILL BE A LITTLE. WE'LL DO WHAT  
13 WE CAN.

14 MS. IBARRA: WHAT EXHIBIT ARE WE ON?

15 MR. FORDYCE: I THINK WE'RE GOING TO LOOK AT NEXT  
16 AT EXHIBIT 32, WHICH IS PLAINTIFFS' EXHIBIT 32. YEAH, IT'S  
17 ON THAT FIRST BINDER BEHIND YOU.

18 YOUR HONOR, THIS IS PLAINTIFFS' BINDER NUMBER ONE.

19 THE COURT: I THINK THIS MIGHT BE IT. 104. OKAY.  
20 AND WHICH EXHIBIT?

21 MR. FORDYCE: 32, YOUR HONOR.

22 THE COURT: IN FACT, YOU MIGHT WANT TO CHECK IF  
23 THAT'S BEEN ADMITTED. WE DISCUSSED IT.

24 MR. FORDYCE: EXHIBIT 32. I WILL BRING UP --  
25 THIS IS NOT NEW. IT WAS IDENTIFIED ON JULY 7.

26 THE COURT: OKAY.

27 THE WITNESS: IT WASN'T ADMITTED.

28 THE COURT: IS THIS ONE ALREADY ADMITTED OR --

*ROUGH DRAFT*

*ROUGH DRAFT*

1 MR. FORDYCE: I DON'T BELIEVE IT'S BEEN ADMITTED,  
2 YOUR HONOR, JUST BECAUSE THE LIABILITY PHASE HAS BEEN SO  
3 STRUNG OUT WITH THE HEALTH CONCERNS, BUT IT'S BEEN  
4 IDENTIFIED RATHER THAN ADMITTED, BUT JULY 7TH WAS WHEN IT  
5 WAS INTRODUCED AT LEAST.

6 THE COURT: DO YOU WANT TO ADMIT IT?

7 MR. FORDYCE: OH, SURE, YEAH.

8 THE WITNESS: FORGIVE ME. IS IT ADMITTED?

9 THE COURT: YES. IT'S RECEIVED.

10 THE WITNESS: THANK YOU.

11 Q. (BY MR. FORDYCE:) ALL RIGHT, MR. STEIN, KIND OF  
12 DOING AN ABOUT FACE HERE A LITTLE BIT AND MOVING ON TO A  
13 DIFFERENT AREA. DO YOU HAVE EXHIBIT 32 IN FRONT OF YOU?

14 A. YES.

15 Q. AND HAVE YOU SEEN THE DOCUMENTS BEFORE?

16 A. YES.

17 Q. YOU'RE FAMILIAR WITH IT.

18 OKAY. LET ME BACK UP A LITTLE BIT.

19 CAN YOU EXPLAIN WHAT SMDC WAS ATTEMPTING TO  
20 ACCOMPLISH WITH THE STATE CASINO PROJECT?

21 A. THIS DOCUMENT WAS PREPARED FOR A MEETING THAT HAD  
22 APPROXIMATELY 30 PEOPLE IN IT THAT WAS HELD IN SACRAMENTO IN  
23 THE CONFERENCE FOR THE ATTORNEY GENERAL WHO WAS BILL LOCKYER  
24 AT THE TIME. AND HE CHAIRED THE MEETING, AND THE DOCUMENT  
25 WAS THE FORMAL PRESENTATION TO HIM. THERE ARE THREE  
26 DEPARTMENT OF JUSTICE -- CALIFORNIA DEPARTMENT OF JUSTICE  
27 LAWYERS THERE TO REVIEW THE LEGAL CLAIMS OF THE TRIBE MADE  
28 BY TRIBAL GENERAL COUNSEL RAY LAMOTHE. THE FOOTBALL PLAYER

*ROUGH DRAFT*



*ROUGH DRAFT*

1 AND MOVIE STAR JIM BROWN WAS THERE TO ENCOURAGE THE ATTORNEY  
2 GENERAL TO AGREE THAT THE TRIBE HAD THE RIGHT TO GAME  
3 BECAUSE THE CASINO WILL BE BUILT IN COMPTON AND WOULD EMPLOY  
4 PEOPLE FROM MR. BROWN'S ORGANIZATION OF AMERI-CAN\* WHICH  
5 HELD FORMER CONVICTS. SO YOU OBVIOUSLY COULDN'T PUT THEM IN  
6 THE GAMBLING PART OF THE TRIBE, BUT YOU COULD CERTAINLY HAVE  
7 THEM PARK CARS AND WASH WINDOWS OR MAKE FOOD ORIGINAL HE  
8 THIS PARK CARS WASH WINDOWS OR MAKE FOOD. AND IN THE -- THE  
9 STATION THAT ARE USED HERE BY THE TRIBE EXPLAIN THE ROLE OF  
10 EACH DIFFERENT PERSON ON IT TO THE ATTORNEY GENERAL AS WELL.

11 Q. DRAWING YOUR ATTENTION TO -- UNFORTUNATELY, THIS IS  
12 NOT BATES-STAMPED, BUT IT IS THE PENULTIMATE PAGE, IT SAYS  
13 FOUR OF FOUR AT THE TOP, THERE'S A SIGNATURE BLOCK HERE.

14 CAN YOU EXPLAIN THE SIGNATURE BLOCK PLEASE.

15 A. YES. THIS IS THE STANDARD SIGNATURE BLOCK I USED  
16 FOR THE -- FOR MANY OF THE INTERACTIONS THAT SMDC HAD TO  
17 EXPLAIN THAT SMDC WAS THE DEVELOPER FOR THE TRIBE, MR. STEIN  
18 WAS NOT A MEMBER OF THE TRIBAL COUNCIL, WAS NOT REPRESENTING  
19 THE TRIBAL COUNSEL. HE'S REPRESENTING SMDC; SO THIS SAYS  
20 VERY TRULY YOURS ON BEHALF OF GABRIELINO-TONGVA TRIBAL  
21 COUNCIL BY JONATHAN STEIN, PRESIDENT OF SMDC. IT SHOWED  
22 THAT THE DEVELOPER WAS WORKING FOR THE TRIBAL COUNCIL AS AN  
23 INDEPENDENT CONTRACTOR.

24 Q. OKAY. NOW, THE COPY THAT WE HAVE IN PLAINTIFFS' 32  
25 IS UNSIGNED. DO YOU HAVE A RECOLLECTION OF WHETHER YOU EVER  
26 ACTUALLY SIGNED THIS DOCUMENT?

27 A. YES. WE HANDED OUT A SIGNED COPY AT THE MEETING.  
28 THERE WERE ABOUT 30 COPIES OF IT.

*ROUGH DRAFT*

*ROUGH DRAFT*

1 Q. OKAY. AND I BELIEVE YOU'VE EXPLAIN AS TO WHY  
2 YOU'VE SIGNED SMDC. THERE'S BEEN TESTIMONY EARLIER ABOUT  
3 WHETHER TRIBAL COUNCIL MEMBERS ACTUALLY WERE APPRISED OF  
4 WHAT WAS HAPPENING AS FAR AS THIS STATE CASINO PROJECT  
5 CONCEPT WAS CONCERNED. IS IT YOUR BELIEF THAT THE TRIBAL  
6 COUNCIL MEMBERS WERE IN FACT INFORMED ABOUT THE STATE'S  
7 CASINO PROJECT AS OUTLINED IN THIS PARTICULAR EXHIBIT?

8 A. YEAH. THEY WERE ACTUALLY -- A NUMBER OF THEM WERE  
9 ACTUALLY THERE. VIRGINIA CARMELO, WHO TESTIFIED THAT SHE  
10 KNEW NOTHING OF THIS, WAS ACTUALLY AT THIS MEETING WHEN THIS  
11 WAS NOT ONLY READ, BUT DISCUSSED AT GREAT LENGTH. I MEAN,  
12 WAS ABOUT A THREE-HOUR MEETING AND SO IS SAM DUNLAP, AND I  
13 DON'T KNOW -- I DON'T REMEMBER IF EDGAR PEREZ WAS THERE OR  
14 NOT.

15 Q. DOES THIS DOCUMENT SHOW YOU ACTING AS THE TRIBE'S  
16 ATTORNEY IN ANY WAY?

17 A. NO. IT SHOWS THE OPPOSITE. BESIDES THE SIGNATURE  
18 BLOCK, THERE'S THE FIRST PAGE, AND ON FIRST PAGE,  
19 EVERYBODY'S ROLE IS EXPLAINED. YOU HAVE THE SIX TRIBAL  
20 COUNCIL PEOPLE. AT THIS POINT CINDI ALVITRI HAS BEEN  
21 REPLACED BY ELIZABETH DUNLAP. YOU SEE SAM DUNLAP, VIRGINIA  
22 CARMELO. THAT'S ON THE LEFT; THEN ON THE RIGHT, IT SHOWS  
23 TRIBAL DEVELOPER, JONATHAN STEIN, SAINT MONICA DEVELOPMENT  
24 COMPANY, AND THEN IT SHOWS WHO THE LAWYER WAS. TRIBAL  
25 GENERAL COUNSEL WAS LAW OFFICES OF RAE LAMOTHE, AND THAT  
26 FOLLOWS RAE LAMOTHE'S RETAINER AGREEMENT WHICH WAS TO BE THE  
27 LAWYER FOR ALL OF THE ECONOMIC DEVELOPMENT TASKS THAT NEEDED  
28 TO BE DONE.

*ROUGH DRAFT*

*ROUGH DRAFT*

1 Q. DO YOU RECALL WHETHER MS. LAMOTHE WAS AT THIS  
2 MEETING?

3 A. NO, I DON'T.

4 Q. DO YOU RECALL IF MS. LAMOTHE REVIEWED THIS DOCUMENT  
5 THAT IS EXHIBIT 32?

6 A. YES. SHE DEFINITELY REVIEWED THIS BECAUSE IT HAD  
7 TO DO WITH THE THEORY OF THE TRIBE'S -- THE THEORY OF THE  
8 TRIBE'S RIGHTS UNDER THE CALIFORNIA CONSTITUTION.

9 Q. ALL RIGHT. SPEAKING OF KEEPING THE COUNCIL MEMBERS  
10 INFORMED AND MS. LAMOTHE, WERE THERE MONTHLY MEETINGS THAT  
11 TOOK PLACE THROUGHOUT SMDC'S \* ER WITH THE TRIBE?

12 A. YEAH. THERE -- IF WE'RE BUSY, WE MET EVERY MONTH,  
13 AND RAE WAS THERE, AS TRIBAL GENERAL COUNSEL, MAYBE 90% OF  
14 THE TIME. YOU USUALLY HAD, IF NOT EVERYBODY AT LEAST FOUR  
15 PEOPLE THERE. CINDI ALVITRI MISSED SO MANY MEETINGS, SHE  
16 EVENTUALLY WAS ASKED TO LEAVE BY THE OTHER TRIBAL COUNCIL  
17 PEOPLE; AND IF WE WEREN'T BUSY, WE MET AT LEAST ONCE A  
18 QUARTER TO MAKE SURE THAT WE DIDN'T FALL OUT OF TOUCH.

19 Q. HOW MUCH COMMUNICATION DID YOU HAVE WITH THE TRIBAL  
20 COUNCIL ON KIND OF, SAY, A DAILY OR WEEKLY BASIS?

21 A. ALMOST NONE.

22 Q. HOW REGULAR WOULD YOU SAY YOUR COMMUNICATIONS WERE?

23 A. AT THE MEETING. THAT'S WHAT THE MEETINGS WERE FOR.  
24 IS THAT WAS WHERE THE REST OF THE TIME. I BASICALLY JUST  
25 WOULDN'T ANSWER THEIR PHONE CALLS OR WOULD GET ON THE PHONE  
26 TO JUST SAY, "TALK TO RAE LAMOTHE. MY JOB IS TO -- I DON'T  
27 HAVE TIME FOR THIS." AND I DON'T THINK I WON ANY FRIENDS BY  
28 DOING IT THAT WAY, BUT AGAIN I HAD TO TRY TO LIMIT TO

*ROUGH DRAFT*

*ROUGH DRAFT*

1 75 HOURS A MONTH THE WORK I WAS DOING FOR THE TRIBE.

2 Q. WAS IT YOUR BELIEF THAT MS. LAMOTHE ACTUALLY DID  
3 KEEP UP COMMUNICATIONS WITH THE TRIBAL COUNCIL?

4 A. YEAH. THEY WOULD OFTEN SAY, "HEY, RAE SAID THIS TO  
5 ME. IS IT TRUE?" OR THEY'D SAY -- I'D SAY, "DID YOU TALK  
6 TO RAE ABOUT THAT?" YES, I DID, AND THEN WE MIGHT DISCUSS  
7 IT A FEW MORE MINUTES BEFORE GETTING OFF THE PHONE.

8 Q. WHEN YOU DID COMMUNICATE WITH THE TRIBE, WHAT WAS  
9 THE NATURE OF YOUR COMMUNICATIONS? DID YOU PROVIDE ADVICE?

10 A. NO. NO. THEY WANTED TO KNOW WHEN THE MONEY WAS  
11 COMING IN. THEY WERE ACCRUING \$3,000 A MONTH AS A -- AS  
12 THEIR OWN STIPEND OR SALARY OR FEE IF YOU WOULD AND THEY  
13 WERE VERY ANXIOUS TO SEE INVESTMENT MONEY COME IN, NOT JUST  
14 BECAUSE IT WOULD GO AND GET THE CASINO, BUT BECAUSE THEY  
15 WOULD GET THEIR 3,000 A MONTH OUT OF IT.

16 Q. AND TO BE CLEAR, WHEN YOU SAY 3,000 A MONTH, ARE  
17 YOU TALKING ABOUT THE COUNCIL GENERALLY, OR ARE YOU TALKING  
18 ABOUT EACH INDIVIDUAL COUNCIL MEMBER?

19 A. EACH COUNCIL MEMBER WOULD GET 3,000 A MONTH FROM  
20 THE INVESTOR MONEY, AND THAT WAS BEING ACCRUED THE SAME WAY  
21 THE SMDC MONEY WAS BEING --

22 Q. SO POTENTIALLY 15-ODD THOUSAND A MONTH TO THE  
23 TRIBAL COUNCIL; CORRECT?

24 A. WELL, IF THERE ARE SIX, IT WILL BE 18; IF THERE ARE  
25 FIVE, IT WOULD BE 15,000 A MONTH; RIGHT. AND THAT WAS  
26 ACTUALLY IN THE BUDGET FOR THE INVESTORS TO SEE.

27 Q. RIGHT.

28 THE COURT: DID THE INVESTORS KNOW ABOUT YOUR

*ROUGH DRAFT*

*ROUGH DRAFT*

1 25,000 A MONTH ARRANGEMENT? IF THEY KNEW ABOUT THE  
2 3,000-DOLLAR A MONTH, WERE THEY ADVISED OF THE OTHER AS  
3 WELL?

4 THE WITNESS: OH, ABSOLUTELY, YEAH.

5 THE COURT: AND THE DEFERRAL AND ALL THAT?

6 THE WITNESS: YEAH. ABSOLUTELY. THAT WAS A BIG  
7 DEAL BECAUSE ONE THING THAT THE INVESTORS ALWAYS WANTED TO  
8 KNOW IS, "HEY, HOW MUCH OF OUR MONEY IS GOING FOR THESE  
9 ACCRUALS AND HOW MUCH OF THE MONEY IS ACTUALLY GOING TO GET  
10 YOU A CASINO BECAUSE WE, AS INVESTORS, COULD CARE LESS ABOUT  
11 YOU GUYS. WE WANT TO GET THE CASINO THAT WE'RE GOING TO  
12 HELP BUILT.

13 THE COURT: SO THEY WERE AWARE OF BOTH THE TRIBAL  
14 COUNCIL MONTHLY THING AND YOUR MONTHLY AND THE DEFERENCE?

15 THE WITNESS: YES.

16 Q. (BY MR. FORDYCE:) AGAIN, MOVING FORWARD, ALTHOUGH  
17 WE'VE GONE THROUGH EXHIBIT 569 AND ANCILLARY EXHIBITS IN  
18 GREAT DETAIL, ESPECIALLY THE IDEA THAT THERE WAS SUPPOSED TO  
19 BE A WRITTEN -- ALL AMENDMENTS WERE SUPPOSED TO BE IN  
20 WRITING.

21 DO YOU REMEMBER BOTH MR. DUNLAP AND MS. CARMELO  
22 TESTIFYING -- MR. DUNLAP IN JULY 7 AND MS. CARMELO IN JULY  
23 12TH, CONCERNING NO OFFICIAL ACTION BY THE TRIBAL COUNCIL TO  
24 HIRE YOUR LAW FIRM AS THEIR ATTORNEY.

25 DO YOU RECALL THEIR TESTIMONY?

26 A. YES. I THINK THERE WAS ACTUALLY A STIPULATION IN  
27 THE COURT THAT THERE WAS NO OFFICIAL ACTION BY GT TRIBE TO  
28 HIRE LAW OFFICES OF JONATHAN STEIN OR JONATHAN STEIN.

*ROUGH DRAFT*

*ROUGH DRAFT*

1 MS. IBARRA: I'M JUST TRYING TO FOLLOW WHAT THE  
2 QUESTION -- YOU'RE TALKING ABOUT THE STIPULATION IN THIS --

3 THE WITNESS: YES. THERE'S A STIPULATION BY YOU  
4 THAT THERE WAS NO OFFICIAL ACTION TO MAKE AN AGREEMENT WITH  
5 LAW OFFICES OF JONATHAN STEIN. YOU'RE CLAIMING THAT IT WAS  
6 SOMEHOW IMPLIED, BUT YOU'RE SO CONVINCED THAT YOU COULD DO  
7 THAT THAT YOU STIPULATED THAT THERE WAS NO OFFICIAL ACTION  
8 TO HIRE JONATHAN STEIN AS AN ATTORNEY.

9 MS. IBARRA: I DON'T RECALL DOING THAT, BUT I DON'T  
10 THINK THAT THE PLAINTIFF IS CONTENDING THAT THERE WAS A  
11 RESOLUTION THAT HIRED MR. STEIN.

12 IS THAT WHAT WE'RE GETTING AT?

13 MR. FORDYCE: YEAH.

14 MS. IBARRA: I DON'T RECALL --

15 THE WITNESS: NO, THAT'S NOT -- FORGIVE ME. THAT'S  
16 NOT WHAT WE'RE GETTING AT AND THAT'S NOT WHAT I SAID,  
17 MS. IBARRA.

18 Q. (BY MR. FORDYCE:) WELL, LET'S MOVE -- I THINK IT  
19 WILL BECOME CLEAR --

20 A. THERE'S NO OFFICIAL ACTION WHATSOEVER.

21 Q. AND SO, MR. STEIN, IT'S YOUR POSITION TODAY, IT'S  
22 YOUR BELIEF THAT THERE WAS NOTHING THAT COMPORTED WITH THE  
23 REQUIREMENTS OF THE AGREEMENT AND THE AMENDMENTS TO RETAIN  
24 YOU AS THE TRIBAL'S ATTORNEY; CORRECT?

25 A. THAT'S CORRECT. THAT GT TRIBE NEVER AGREED TO  
26 RETAIN JONATHAN STEIN AS AN ATTORNEY OR LAW OFFICES OF  
27 JONATHAN STEIN AS ITS ATTORNEY.

28 Q. LET'S BE CLEAR. WAS THERE EVER AN AGREEMENT

*ROUGH DRAFT*

*ROUGH DRAFT*

1 OUTSIDE THE SMDC AGREEMENT BETWEEN THE TRIBE AND YOU?

2 A. YES, THERE WAS.

3 Q. PLEASE ELABORATE.

4 A. WE -- THE -- TO BE A LOBBYIST FOR THE TRIBE, I --  
5 SMDC REGISTERED AS A LOBBYIST. I INDIVIDUALLY REGISTERED AS  
6 A LOBBYIST TO COMPORT WITH POLITICAL REFORM ACT, YOU HAVE TO  
7 MEET CERTAIN REQUIREMENTS INCLUDING, NOT HAVING A  
8 CONTINGENCY RIGHT TO MONEY FOR PASSING LEGISLATION. THE  
9 IDEA IS IF YOU GET THIS BIG WINDFALL, IF LEGISLATION PASSES,  
10 MAYBE YOU WILL BE BRIBING PEOPLE WITH ENVELOPES FULL OF  
11 CASH; SO WE HAD TO ENTER INTO A SEPARATE CONTRACT WITH  
12 THAT -- THAT ACTUALLY WAS WRITTEN BY A SACRAMENTO LAWYER AND  
13 THAT CONTRACT WAS FOR SPECIFICALLY FOR THE LOBBYING WORK; SO  
14 BECAUSE THE SMDC AGREEMENTS REQUIREMENT THAT ANY CHANGES TO  
15 THE SMDC AGREEMENT BE MADE IN WRITING, THAT CONTRACT HAD TO  
16 BE MADE IN WRITING AND IN FACT IT WAS.

17 Q. SEE IT'S YOUR POSITION, AS YOU SIT HERE TODAY, THAT  
18 THE LOBBYING CONTRACT, AND LET'S BE CLEAR, LET ME LAY A  
19 LITTLE FOUNDATION. JUST BE VERY CLEAR FOR THE RECORD.  
20 BETWEEN -- WHO WERE THE PARTIES TO THE LOBBYING CONTRACT?

21 A. GT TRIBE AND SMDC.

22 Q. OKAY. SO IT'S YOUR POSITION, AS YOU SIT HERE  
23 TODAY, IF I'M UNDERSTANDING YOUR TESTIMONY, THAT THAT  
24 CONTRACT, THE LOBBYING CONTRACT COMPORTED WITH THE WRITTEN  
25 REQUIREMENTS CONTAINED IN THE SMDC AGREEMENT AND THE  
26 MODIFICATIONS; IS THAT CORRECT?

27 A. RIGHT, YES.

28 Q. OKAY.

*ROUGH DRAFT*

*ROUGH DRAFT*

1           A.    THE SMDC AGREEMENT JUST SAYS IT'S GOT TO BE IN  
2 WRITING SIGNED BY THE PARTIES.  YOU CAN CHANGE THE TERMS,  
3 BUT IF YOU DO SO IT'S GOT TO BE IN WRITING.

4           Q.    OKAY.  AND JUST KIND OF BROADLY, TO YOUR KNOWLEDGE,  
5 AND LET'S AGAIN LAY SOME FOUNDATION; YOU HAVE WORKED AS A  
6 LOBBYIST; CORRECT?

7           A.    YES.  AND THE REGISTRATION STATEMENT SHOW\*.

8           Q.    OKAY.  DOES ONE NEED TO BE A LAWYER IN YOUR BELIEF  
9 TO BE A LOBBYIST?

10          A.    NO.  IN FACT LOBBYING WORK IS BY DEFINITION NOT  
11 LEGAL WORK, EVEN THOUGH YOU'RE CHANGING THE LAWS.

12          Q.    OKAY.  LET ME ASK YOU WHY -- I THINK YOU STATED  
13 THAT YOU DID LEGAL WORK DURING THE DURATION OF THE SMDC  
14 AGREEMENT, BUT WHY DID YOU DO ANY LEGAL WORK AT ALL JUST TO  
15 BE CLEAR?

16          A.    THERE WAS NO MONEY TO HIRE LAWYERS TO DO EVERY  
17 LITTLE THING SO, FOR EXAMPLE, ARMED AND ARABIAN CRUZ\*  
18 REYNOSO'S COULD BE HIRED BY THE TRIBE AND TELL THE TRIBE,  
19 YES, WE THINK THAT YOU HAVE RIGHTS UNDER THE CALIFORNIA  
20 CONSTITUTION TO CONDUCT GAMING, BUT THERE WAS NO MONEY TO DO  
21 EVERY LITTLE LEGAL THING; SO AS SMDC LEGAL WORK, I DID, AND  
22 THE TRIBE'S LEGAL WORK RAE LAMOTHE DID, OR THE SPECIALIST  
23 DID.

24          Q.    OKAY.  AND AGAIN A LITTLE BIT OF THIS.  I HOPE IT'S  
25 NOT TOO MUCH REHASH.  I DON'T THINK IT IS, BUT I WANT TO BE  
26 VERY CLEAR; SO WE DO HAVE A GOOD RECORD.

27                    UNDER THE SMDC AGREEMENT, WHAT IS YOUR  
28 INTERPRETATION OF ANY FIDUCIARY DUTIES OWED ON THE PART OF

*ROUGH DRAFT*



*ROUGH DRAFT*

1 SMDC?

2 A. THE -- THERE WAS NO FIDUCIARY DUTIES OWED BY SMDC  
3 OR BY STEIN TO THE TRIBE. THE SMDC AGREEMENT MADE THAT  
4 CLEAR AND THE APPOINTMENT TO STEIN AND TO SOME POSITION IN  
5 THE TRIBE WAS JUST NOMINAL AND THAT'S MADE CLEARED -- THE  
6 SMDC AGREEMENT IS NECESSARY BECAUSE IT MAKES CLEAR THAT WAS  
7 NOMINAL BUT THAT STEIN WAS WORKING FOR SMDC AS AN  
8 INDEPENDENT CONTRACTOR, AND STEIN AND SMDC WERE WORKING FOR  
9 THE TRIBE AS AN INDEPENDENT CONTRACTOR, AND THEY WERE ONLY  
10 LIABLE ON THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT  
11 STANDARD.

12 Q. AT ANY POINT DID YOU TAKE A CEO ROLE WITH THE  
13 TRIBE?

14 A. NO.

15 Q. NOW IF YOU HAD, FOR EXAMPLE, WOULD THERE HAVE BEEN  
16 A FIDUCIARY RELATIONSHIP UNDER THE SMDC AGREEMENT?

17 A. NO. THE SMDC AGREEMENT WENT INTO DETAIL TO MAKE  
18 SURE THAT NONE WAS CREATED, BUT I WAS NEVER CEO OF GT TRIBE.  
19 I WAS A CEO OF AN LLC BUT NEVER GOT OFF THE GROUND.

20 Q. ALL RIGHT. I'D LIKE YOU TO TOUCH AGAIN, JUST YOU  
21 MENTIONED IT BRIEFLY -- ABOUT JUSTICE REYNOSO AND JUSTICE  
22 ARABIAN\*. WHAT WERE THEIR ROLES IN RELATION TO GT TRIBE?

23 A. WELL, THEY HAD A LOT OF PRESTIGE, AND THEY DID TWO  
24 THINGS. FIRST OF ALL, THEY TOLD THE TRIBE THAT "HEY, THIS  
25 STATE RECOGNITION IDEA IS A GOOD IDEA." IT MADE VERY CLEAR  
26 THAT TO -- THE TRIBAL COUNCIL IN WRITING, IN VERY EXPLICIT  
27 LETTERS, THAT ALL THE TRIBAL COUNCILMEN READ IN MY PRESENCE,  
28 SEVERAL TIMES, BECAUSE THEY LOVED IT. THEY ABSOLUTELY LOVED

*ROUGH DRAFT*

*ROUGH DRAFT*

1 IT; SO TO HEAR THEM TESTIFY OF THE OPPOSITE SHOCKED ME, BUT  
2 THAT WAS ONE OF THEIR ROLES WAS TO TELL TRIBAL COUNCIL,  
3 "HEY, THIS THEORY, THIS WAY OF GOING FORWARD, YOU'RE NOT  
4 WASTING YOUR TIME. I'M A FORMER CALIFORNIA SUPREME COURT  
5 JUSTICE CHARGED WITH INTERPRETING THE CONSTITUTION, AND I  
6 CAN TELL YOU TODAY THAT I INTERPRET IT THAT YOU CAN CONDUCT  
7 GAMING, BASED ON STATE RECOGNITION, NOT \* RECOGNITION --

8 THE COURT: AND DID -- I'M SORRY. GO AHEAD,  
9 MR. STEIN.

10 THE WITNESS: SORRY. THAT WAS ONE THING. THE  
11 SECOND THING IS BECAUSE THEY'RE THESE VERY PRESTIGIOUS  
12 RETIRED SUPREME COURT JUSTICES, THEY CARRIED WAIT WITH  
13 POLITICAL OFFICIALS SUCH AS ATTORNEY GENERAL LOCKYER, AND  
14 THE MEMBERS OF LEGISLATURE AND THE GOVERNOR THAT SAID, "HEY,  
15 YOU CAN ENTER INTO A TRIBAL STATE COMPACT\* AND HAVE A CASINO  
16 IN LOS ANGELES; THAT WAS WILL THROW OFF THOUSANDS UPON  
17 THOUSANDS OF UNIONIZED JOBS AND THROW OFF HUNDREDS OF  
18 MILLIONS OF DOLLARS OF TAX REVENUES TO THE STATE OF  
19 CALIFORNIA, EVERY SINGLE YEAR. THE CASINO WOULD QUITE  
20 LITERALLY BE THE LARGEST TAXPAYER IN THE STATE OF CALIFORNIA  
21 AND PAY MORE TAXES THAN THE TOP LARGEST -- THAN THE TEN TOP  
22 LARGEST CORPORATIONS PAID TO CALIFORNIA: LOCKHEED, BOEING,  
23 COMPANIES LIKE THAT, WOULD ALTOGETHER -- THE TEN OF THEM  
24 TOGETHER WOULD YIELD LESS TAX REVENUE TO CALIFORNIA THAN  
25 THIS CASINO ONCE IT --

26 MS. IBARRA: OBJECTION. NO FOUNDATION.

27 THE COURT: SUSTAINED.

28 Q. (BY MR. FORDYCE:) IS THAT YOUR BELIEF, MR. STEIN?

*ROUGH DRAFT*

*ROUGH DRAFT*

1 A. YES, IT IS.

2 Q. NOW, WHO APPROACHED MR. REYNOSO -- I'M SORRY.  
3 JUSTICE REYNOSO AND JUSTICE ARABIAN? WHOSE IDEA WAS IT?  
4 LET'S PUT IT THAT WAY?

5 A. THE IDEA ACTUALLY ORIGINATED WITH THIS GUY BRUCE  
6 EICHNER\*.

7 Q. PLEASE EXPLAIN.

8 A. BRUCE EICHNER WAS A BILLIONAIRE. HE'S A VERY, VERY  
9 SUCCESSFUL MAN, AND HE HAD WORKING FOR HIM A GUY BY THE NAME  
10 OF DAVID FREEDMAN -- WAS HIS RIGHT HAND MAN AND THEY -- I  
11 HAD MEETINGS WITH THEM IN TRYING TO FIND INVESTMENT GROUPS  
12 BECAUSE THEY WERE MAKING LOTS AND LOTS OF MONEY IN LAS  
13 VEGAS, AND WE HAD FIVE OR SIX OR SEVEN MEETINGS, AND OVER  
14 THE COURSE OF THE MEETINGS, IT WAS ACTUALLY DAVID FREEDMAN  
15 WHO CAME UP WITH THE THEORY AND SAID, "CAN YOU LOOK INTO  
16 THIS, JONATHAN?" I SAID, "OH, THIS SOUNDS GREAT."

17 AND SO WE WENT FORWARD WITH A THEORY AND THAT LED  
18 EVENTUALLY TO THE APRIL 2004 MEETING WITH ATTORNEY GENERAL  
19 LOCKYER TO PRESENT IT TO HIM.

20 Q. IS IT YOUR BELIEF THAT ANYTHING YOU DID IN RELATION  
21 TO THE TWO JUSTICES AND THE STATE GAMING THEORY, IS THIS  
22 PRACTICING LAW FOR THE TRIBE?

23 A. NO, NO. I WAS WORKING FOR AS SMDC AND SMDC WAS AN  
24 INDEPENDENT CONTRACTOR FOR LAMOTHE. RAE LAMOTHE WAS THE  
25 LAWYER FOR THE TRIBE AS SHOWN ON THE FIRST PAGE OF EXHIBIT  
26 32.

27 Q. IS IT YOUR BELIEF THAT YOUR UNDERTAKINGS WITH  
28 JUSTICE REYNOSO AND JUSTICE ARABIAN CONSTITUTE DEVELOPMENT

*ROUGH DRAFT*

*ROUGH DRAFT*

1 SERVICES UNDER THE TERMS OF THE SMDC AGREEMENT?

2 A. YES, THEY DO, AND THEY ALSO CONSTITUTED LOBBYING  
3 SERVICES UNDER THE LOBBYING AGREEMENT.

4 Q. ALL RIGHT. LET'S KEEP MOVING FORWARD. LET ME ASK  
5 YOU: DO YOU BELIEVE THAT MS. LAMOTHE COULD ALLOW YOU TO BE  
6 THE TRIBE'S LAWYER HAD YOU WANTED TO BE? IS THAT SOMETHING  
7 WITHIN --

8 A. NO. NO, I COULDN'T GET ANY APPROVAL FROM RAE  
9 LAMOTHE. THEY WOULD HAVE TO COME THROUGH THE TRIBAL  
10 COUNCIL, AND I THINK HER RETAINER AGREEMENT SAID  
11 SPECIFICALLY THAT SHE WAS NOT EMPOWERED TO MAKE DECISIONS  
12 WITH THE TRIBE.

13 Q. ALL RIGHT. SO AGAIN TO BE CLEAR, NEITHER YOU, YOUR  
14 LAW FIRM, NOR SMDC WAS EVER PAID FOR ANY ATTORNEY SERVICES;  
15 IS THAT CORRECT?

16 A. NO. THERE WAS NEVER ANY CONTRACT. THERE WAS NEVER  
17 ANY PAYMENT NOR WAS THERE EVER ANY AGREEMENT TO PROVIDE  
18 PAYMENT. NONE OF THOSE THREE.

19 Q. ALL RIGHT. LET'S MOVE ONTO THE DOCUMENTS  
20 THEMSELVES. LET'S -- FIRST I BELIEVE WE'RE ACTUALLY GOING  
21 TO STAY IN PLAINTIFFS' FIRST NOTEBOOK. LET'S TURN TO  
22 EXHIBIT 19, WHICH IS -- UH-HUH, MINE IS BLANK BUT I BELIEVE  
23 IT IS --

24 THE COURT: I HAVE AN EXHIBIT 19.

25 MR. FORDYCE: HOW COMPLETE IS IT, YOUR HONOR? IS  
26 IT JUST THE FACE PAGE WHERE THE --

27 MS. IBARRA: IT GOT COPIED IN A WEIRD WAY.

28 THE COURT: I HAVE ATTACHMENTS AND CASES AND A

*ROUGH DRAFT*

*ROUGH DRAFT*

1 SUMMONS AND A LOT OF DIFFERENT THINGS ATTACHED TO A  
2 DEMURRER.

3 THE WITNESS: AND THERE'S ALSO THE COMPLAINT COVER  
4 PAGE, PAGE 8738.

5 MS. IBARRA: YEAH, IT GOT COPIED INCORRECTLY SO --  
6 BUT HOW IT'S LIST IN OUR EXHIBIT LIST IS 19 IS SUPPOSED TO  
7 BE THE DEMURRER, AND THE 20 SHOULD BE THE SUMMONS AND  
8 COMPLAINT IN THE MORALES LITIGATION, BUT THEY GOT COPIED  
9 TOGETHER.

10 THE COURT: SO IT WASN'T SUPPOSED TO BE ATTACHED TO  
11 THE DEMURRER?

12 MS. IBARRA: NO, IT WASN'T. THE SUMMONS AND  
13 COMPLAINT INITIATING THE MORALES LITIGATION LISTED AS 20,  
14 BUT THEN THEY GOT TO 20 AND 19 AND 20 GOT COPIED TOGETHER AS  
15 19.

16 THE COURT: BECAUSE THERE'S NOTHING IN MY BOOK AS  
17 20.

18 MS. IBARRA: SO IT'S THE SUMMONS AND COMPLAINT  
19 THAT'S ATTACHED TO THE END OF 19.

20 THE COURT: OKAY. SO THAT SHOULD BE 20. WE'LL  
21 CHANGE THAT IN OUR BOOKS AND YOU HAVE THAT ON YOUR EXHIBIT  
22 LIST?

23 MS. IBARRA: YEAH, THAT'S HOW WE HAVE IT LISTED IN  
24 OUR --

25 THE COURT: SO ARE WE REALLY LOOKING AT 19 OR 20?

26 MR. FORDYCE: I THINK WE'RE LOOKING AT 19,  
27 INITIALLY, AND I'LL JUST ASK SOME FAIRLY --

28 THE WITNESS: WOULD YOU LIKE TO LOOK AT 20?

*ROUGH DRAFT*

*ROUGH DRAFT*

1 MR. FORDYCE: LET ME SEE WHAT YOU HAVE.

2 YEAH. I HAVE NOTHING.

3 YOUR HONOR, MAY COULD I APPROACH THE WITNESS AND  
4 SEE HE HAS AN EXHIBIT 20?

5 THE COURT: YES. WE MOVED -- THIS HAD BEEN ADDED  
6 AS 19, AND WE SEPARATED.

7 MR. FORDYCE: YEAH, THAT'S GREAT. OKAY. THAT'S  
8 FINE.

9 20 IS THE EXHIBIT.

10 THE COURT: THE EXHIBIT 19 IS THE DEMURRER WITH, I  
11 GUESS, ATTACHMENTS. WE'VE SEPARATED SOME DOCUMENTS OUT OF  
12 19 AND PUT THEM INTO 20. THE DOCUMENT THAT WE SEPARATED  
13 FROM 19 AND PUT INTO 20 IS COMPLAINT FOR FRAUD, BUT THAT'S  
14 WHAT 20 IS.

15 Q. (BY MR. FORDYCE:) OKAY. MR. STEIN, HAVE YOU SEEN  
16 EXHIBIT 20 BEFORE?

17 A. YES.

18 Q. PLEASE EXPLAIN WHAT EXHIBIT 20 IS?

19 A. THIS IS THE COMPLAINT FILED ON BEHALF OF  
20 INDIVIDUALS AGAINST A -- NOT FOR PROFIT CORPORATION RUN BY  
21 ANTHONY MORALES. IT'S CALLED THE MORALES LITIGATION, AND  
22 WHAT THESE INDIVIDUALS ARE SAYING IS THAT BOTH ON THEIR OWN  
23 BEHALFS AND --

24 THE COURT: WHICH INDIVIDUALS? THE PLAINTIFFS OR  
25 THE DEFENDANTS?

26 THE WITNESS: THE PLAINTIFFS.

27 THE COURT: THE PLAINTIFFS. OKAY.

28 THE WITNESS: SO SAM DUNLAP, MARK \*NAKAWA, VIRGINIA

*ROUGH DRAFT*

*ROUGH DRAFT*

1 CARMELO, EDGAR PEREZ ARE SAYING THAT ON THEIR BEHALF AND AS  
2 AS A DERIVATIVE ACTION OF THE CORPORATION, THEY'RE SUING  
3 ANTHONY MORALES FOR BREACH OF FIDUCIARY DUTY.

4 Q. (BY MR. FORDYCE:) IS THE TRIBE EITHER A PLAINTIFF  
5 OR DEFENDANT?

6 A. NO GT TRIBE -- THE ORGANIZATION THAT HAD THE  
7 CONTRACT WITH US, SMDC IS NOT AT ALL INVOLVED IN THE  
8 LAWSUIT.

9 Q. TO YOUR KNOWLEDGE, IS THE TRIBE A CROSS-COMPLAINANT  
10 OR A CROSS-DEFENDANT IN ANY RELATED ACTION?

11 A. NO. THIS ACTION HAD NOTHING TO DO WOULD THE GT  
12 TRIBE. IT HAD EVERYTHING TO DO WITH MORALES'S GROUP AND THE  
13 ATTEMPT OF THESE INDIVIDUALS TO SAY, "LISTEN. YOU WRONGLY  
14 THREW US OUT OF YOUR GROUP," AND BY DOING SO, YOU'RE ALSO  
15 DAMAGING THE ORGANIZATION THAT YOU'RE HEAD OF AND THIS IS  
16 THE GROUP WAS CALLED GABRIELINO-TONGVA TRIBAL COUNCIL, INC.,  
17 AND THAT WAS THE MORALES GROUP.

18 Q. IS THERE ANYTHING ON EXHIBIT 20 THAT SHOWS TO YOU  
19 THAT YOU'RE THE ATTORNEY FOR GT TRIBE?

20 A. NO. I WAS THE ATTORNEY FOR ONE OF THE PLAINTIFFS,  
21 SAM DUNLAP.

22 Q. OKAY. AND THIS IS WHAT I REALLY HATE TO DO, BUT I  
23 DO HAVE TO BOUNCE AROUND JUST A LITTLE BIT.

24 EXHIBIT 753 AND THAT'S PLAINTIFFS -- I'M SORRY.  
25 THAT'S DEFENDANT VOLUME III. IF YOU CAN TAKE A MOMENT TO  
26 GET THAT OUT, AS YOU DO, I WILL ASK YOU: DID YOU  
27 REPRESENT --

28 MS. IBARRA: DEFENDANTS?

*ROUGH DRAFT*

*ROUGH DRAFT*

1 MR. FORDYCE: YES. DEFENDANTS' VOLUME 3 AND  
2 EXHIBIT 753.

3 Q. (BY MR. FORDYCE:) DID YOU REPRESENT MR. DUNLAP  
4 THROUGHOUT THE ENTIRE MORALES LITIGATION?

5 A. NO. I DIDN'T WANT TO REPRESENT HIM AT ALL. HE  
6 KIND OF EXTORTED ME INTO IT SO I GOT OUT OF IT AS SOON AS I  
7 COULD.

8 Q. WELL, PLEASE EXPLAIN WHEN YOU SAY YOU GOT OUT OF  
9 IT. WHAT TOOK PLACE?

10 A. RAE LAMOTHE WHO WAS REPRESENTING ALL THE OTHER  
11 INDIVIDUALS REPRESENTED -- TOOK OVER THE REPRESENTATION OF  
12 SAM DUNLAP AS WELL.

13 Q. AND DRAWING YOUR ATTENTION TO EXHIBIT -- DEFENDANTS  
14 753 WHICH IS A BATES NUMBER IN THE BOTTOM OF 1391. WE'VE  
15 ALREADY LOOKED AT THIS, AND IT'S BEEN IDENTIFIED. THIS IS A  
16 UNSIGNED COPY OF A RESOLUTION DATED MARCH 24, 2002.

17 HAVE YOU SEEN RESOLUTION 39 BEFORE?

18 A. YES. YES, I WAS THERE WHEN THEY SIGNED IT.

19 Q. OKAY. WHAT WAS THE PURPOSE OF RESOLUTION 39 TO  
20 YOUR UNDERSTANDING?

21 A. WELL, THE TERMS SET IT FORTH ON WHEREAS CLAUSES AND  
22 THE RESOLUTIONS.

23 Q. OKAY. AND THE RESOLUTIONS IS ENTITLED THE APPROVAL  
24 OF WAIVER OF CONFLICT OF INTEREST FOR TRIBAL GENERAL COUNSEL  
25 TO REPRESENT INDIVIDUAL TRIBAL MEMBERS; IS THAT A CORRECT  
26 STATEMENT OF THE DOCUMENT?

27 A. YES. THAT'S THE TITLE OF IT.

28 Q. WHAT IS THE DATE?

*ROUGH DRAFT*



*ROUGH DRAFT*

1 A. THIS IS MARCH 24TH, 2002.

2 Q. AND THE DATE OF THE -- WHAT IS THE DATE OF THE  
3 LAWSUIT IN EXHIBIT 20? DOES IT HAVE A DATE --

4 A. YES. AUGUST 29TH, 2002 SO THE LAWSUIT STARTED  
5 THREE OR FOUR MONTHS AFTER THE CONFLICT WAIVER WAS SIGNED.

6 Q. OKAY. DID THE COURT IN THE MORALES LITIGATION MAKE  
7 ANY FINDINGS AS TO JURISDICTION?

8 A. YES.

9 THE COURT: THAT'S VAGUE. JURISDICTION? WHAT KIND  
10 OF JURISDICTION ARE YOU TALKING ABOUT?

11 MR. FORDYCE: AS TO WHETHER THE COURT ITSELF HAVE  
12 JURISDICTION OVER AN INDIAN TRIBE?

13 THE WITNESS: THE -- THE

14 THE COURT: IN THE MORALES LITIGATION?

15 MR. FORDYCE: CORRECT. IN MORALES.

16 THE WITNESS: THE COURT IN THE MORALES LITIGATION  
17 GRANTED SUMMARY JUDGMENT AGAINST THE INDIVIDUALS SAYING THAT  
18 THE COURT HAD NO JURISDICTION OVER THE CALIFORNIA NOT FOR  
19 PROFIT CORPORATION, OR THE INDIAN TRIBE, OR THE INDIVIDUALS  
20 BECAUSE THEY WERE INDIANS.

21 Q. (BY MR. FORDYCE:) AND THAT'S YOUR UNDERSTANDING OF  
22 THE BASIS FOR THE RULING IN THE MSJ.

23 THE COURT: OKAY. WHO BROUGHT IT AGAINST WHO --

24 THE WITNESS: JACK SCHWARTZ WAS ATTORNEY FOR  
25 ANTHONY MORALES, AND HE SUCCESSFULLY ARGUED THAT THE COURT  
26 HAD NO JURISDICTION OVER A STATE RECOGNIZED INDIAN TRIBE OR  
27 OVER A CALIFORNIA NOT FOR PROFIT CORPORATION USED BY THE  
28 STATE RECOGNIZED TRIBE.

*ROUGH DRAFT*

*ROUGH DRAFT*

1 Q. DURING THE MORALES LITIGATION DID YOU ATTEND ANY  
2 MEDIATIONS OR VOLUNTARY SETTLEMENT CONFERENCE, ANYTHING OF  
3 THAT SORT?

4 A. YES, I DID.

5 Q. PLEASE EXPLAIN.

6 A. THERE WAS -- AT THAT TIME, YOU WERE SUPPOSED TO GO  
7 TO AN EARLY MEDIATION BETWEEN THE PARTIES AND THAT WAS A  
8 TYPICAL PROCEDURAL THING TO DO AND SO WE HAD THAT EARLY  
9 MEDIATION. THERE WAS A VERY ROBUST MEDIATION PROGRAM RUN BY  
10 THE COURTS AND STAFFED BY VOLUNTEER ATTORNEYS, INCLUDING THE  
11 VOLUNTEER ATTORNEY WHO DID THIS MEDIATION.

12 Q. WHO ATTENDED THE MEDIATION TO YOUR KNOWLEDGE?

13 A. MANY OF THE INDIVIDUAL PLAINTIFFS. I DON'T KNOW IF  
14 THEY WERE ALL THERE, BUT MOST WERE THERE, AND ANTHONY  
15 MORALES WAS THERE AND A NUMBER OF THE INDIVIDUAL  
16 PLAINTIFFS -- DEFENDANTS WERE THERE.

17 Q. DO YOU REMEMBER IF MS. LAMOTHE, THE DEFENDANT --

18 A. YES, SHE DID. AS THE ATTORNEY FOR ALL THE  
19 PLAINTIFFS EXCEPT SAM DUNLAP.

20 Q. WERE YOU THERE?

21 A. YES. AS SAM DUNLAP'S ATTORNEY.

22 Q. AND WHAT HAPPENED AT THE MEDIATION?

23 A. IT STARTED OUT JUST FINE. THE LAWYERS WERE  
24 TALKING, BUT AS SOON AS THE TRIBAL COUNCIL MEMBERS OF THE  
25 OPPOSING FACTIONS, THE GT TRIBE FACTION THAT IS PART OF THIS  
26 LAWSUIT AND MR. MORALES' FACTION, AS SOON AS THEY STARTED TO  
27 TALKING TO EACH, THEY STARTED SCREAMING AT EACH OTHER.

28 Q. SO FAIR TO SAY IT WASN'T A SUCCESSFUL MEDIATION?

*ROUGH DRAFT*

*ROUGH DRAFT*

1           A.   NO.  I, MYSELF, DID SOME SCREAMING.  IT WAS REALLY  
2   A MESS.

3           Q.   JUST QUICKLY SUMMING UP.  WHAT WAS THE END RESULT?  
4   I BELIEVE YOU TESTIFIED TO A CERTAIN EXTENT ABOUT THIS, BUT  
5   WHAT WAS THE END RESULT OF MORALES LITIGATION?

6           A.   THAT THERE WAS A JUDGMENT FOR FEES AND COSTS, BASED  
7   ON THE SUMMARY JUDGMENT GRANTED, AND THAT CAME OUT TO ABOUT  
8   \$56,000, AND IT WAS LEVIED.  IT WASN'T LEVIED.  IT WAS --  
9   JUDGMENT WAS RECORDED AGAINST ALL THE INDIVIDUALS -- SAM  
10  DUNLAP, MAR NAKAWA, VIRGINIA CARMELO AND EDGAR PEREZ.

11          Q.   ARE YOU AWARE OF ANY STEPS TAKEN BY THE TRIBE TO  
12  PAY THE JUDGMENT THAT YOU JUST MENTIONED?

13          A.   YEAH.

14          Q.   WHAT HAPPENED?

15          A.   THESE SAME INDIVIDUALS WERE VOTING TRIBAL COUNCIL  
16  PEOPLE.  WHEN LEEB PWREES SAID WE WANT TO MAKE AN INVESTMENT  
17  AND THEY WERE PRESENTED WITH A CAREFULLY NEGOTIATED  
18  AGREEMENT.  THEY WERE PRESENTED WITH THE AGREEMENT TEN  
19  TIMES, AND THEY MADE CLEAR THAT THEY WOULD NOT SIGN THIS  
20  AGREEMENT, UNLESS PART OF THE BUDGET PROVIDED BY THE  
21  INVESTORS PAID OFF THE JUDGMENT.  THEY JUST SAID,  
22  "WE'LL VOTE AGAINST IT."  WE WANT THE MONEY.  WE WANT TO GET  
23  PAID BUT UNLESS WE GET A CERTAIN AMOUNT OF MONEY FOR THE  
24  JUDGMENT AND A CERTAIN AMOUNT OF MONEY FOR OUR CREW \$3,000 A  
25  MONTH, WE'RE NOT GOING TO GO FOR THE DEAL.

26          Q.   SO I THINK THERE'S BEEN TESTIMONY ABOUT WHETHER THE  
27  LEE\*BRA FUNDS COULD BE USED FOR ANY NONCASINO PURPOSES.  
28  WAS THIS A NONCASINO PURPOSE?

*ROUGH DRAFT*

*ROUGH DRAFT*

1           A.    IT WAS A NONCASINO PURPOSE; HOWEVER, THEY  
2 ABSOLUTELY INSISTED ON IT AND SO LEEBER\* WAS GRACIOUS ENOUGH  
3 TO SAY SURE.

4           Q.    CAN WE BE CLEAR WITH OUR PRONOUNS.  WHEN YOU SAY  
5 "THEY," WHO DO YOU MEAN?

6           A.    SAM DUNLAP, MAR NAKAWA, VIRGINIA CARMELO, AND EDGAR  
7 PEREZ SIMPLY SAID, YOU CAN'T ADOPT THIS AGREEMENT WITHOUT  
8 OUR VOTES.  WE'RE NOT GOING TO GIVE OUR VOTES UNLESS IT  
9 INCLUDES IN THE BUDGET, THE FULL AMOUNT TO PAY THE JUDGMENT,  
10 AND IF YOU DO THAT, THEN WE'LL VOTE FOR.

11          Q.    DID THEY SAY THIS TO YOU?

12          A.    THEY SAID THIS TO ME 40 TIMES, 50 TIMES.

13          Q.    AND JUST GENERALLY WHY WERE YOU AT -- OH, WELL, LET  
14 ME ASK THAT A BIT BETTER.

15                 WERE YOU PART OF ANY NEGOTIATIONS FOR THIS FINAL  
16 PAYMENT?

17          A.    TO THEM?  NO, NO.  RAE LAMOTHE WAS THE ATTORNEY FOR  
18 ALL OF THEM.  BY THIS TIME I LONG SINCE LEFT THE CASE FOR  
19 SAM DUNLAP, AND SHE HAS HANDLED ALL THE NEGOTIATIONS WITH  
20 THEM.

21                 THE COURT:  ARE YOU SAYING THE --

22                 MR. FORDYCE:  YES, THE JUDGMENT.

23                 THE COURT:  OH, THE JUDGMENT.  I'M SORRY.

24                 THE WITNESS:  WELL, SHE HANDLED ALL THE  
25 NEGOTIATIONS WITH JACK SCHWARTZ WHO WAS THE ATTORNEY FOR THE  
26 MORALES EVENTS.

27          Q.    (BY MR. ATTORNEY:)  AND JUST TO BE CLEAR, BACKING  
28 UP A LITTLE BIT, DID MR. DUNLAP ASK YOU TO REPRESENT HIM IN

*ROUGH DRAFT*

*ROUGH DRAFT*

1 THE MORALES MATTER?

2 A. MS. DUNLAP ASKED ME TO REPRESENT HIM AND BASICALLY  
3 SAID, IF YOU DON'T, WE'RE JUST GOING TO STOP THE  
4 RELATIONSHIP RIGHT NOW.

5 Q. THAT WAS GOING TO BE MY QUESTION IS HOW DID HE ASK  
6 YOU TO REPRESENT HIM?

7 A. WELL, HE'S A WELL SPOKEN, WELL EDUCATED GUY. HE'S  
8 A ARCHEOLOGIST IS HIS JOB, AND HE MADE IT CLEAR WITH A  
9 MINIMUM OF DIPLOMACY THAT THE SMDC AGREEMENT WOULD BE  
10 TERMINATED BY TRIBAL COUNCIL THAT USUALLY AGREED WITH HIS  
11 ADVISE AND IF I DIDN'T REPRESENT HIM PERSONALLY THAT THEY  
12 WOULD TERMINATE THE SMDC AGREEMENT.

13 Q. LET ME ASK YOU WHEN THE JUDGMENT WAS RENDERED  
14 AGAINST THE INDIVIDUALS, WHAT HAPPENED? WAS THERE A -- WAS  
15 THERE A CHANGE IN YOUR RELATIONSHIP WITH THE TRIBAL COUNCIL  
16 MEMBERS?

17 A. YEAH. THEY WENT FROM A DISDAIN FOR ME BECAUSE I  
18 WOULDN'T TALK TO THEM. I LEFT THAT TO RAE LAMOTHE. I HAD  
19 TO EARN A LIVING AND ALSO THROUGH THE SMDC WORK WITH  
20 INVESTORS, BUT THEY REALLY, REALLY WANTED THE INVESTOR  
21 MONEY; SO THEY WERE VERY POLITE TO ME BECAUSE THEY REALLY,  
22 REALLY WANTED THAT MONEY BECAUSE THEY WERE GOING TO GET  
23 3,000 A MONTH AND WOULD ALSO GET A CASINO FOR THE TRIBAL \*  
24 THOSE WERE THE BIG PRIORITIES. WHEN THE JUDGMENT CAME OUT  
25 AND THEY WERE HELD LIABLE, THEY WERE -- THEY VERY MUCH  
26 TURNED AGAINST ME. WHATEVER FRIENDSHIP I HAD -- I DIDN'T  
27 BELIEVE I HAD ANY FRIENDSHIP WITH THEM. I DIDN'T SOCIALIZE  
28 WITH THEM OTHER THAN THE MEETINGS AND ALLOWING MR. DUNLAP TO

*ROUGH DRAFT*

*ROUGH DRAFT*

1 USE THE OFFICE WHEN HE WAS IN THE WEST L.A. FOR THE PLAYA  
2 VISTA PROJECT, THEY WERE GOT VERY BITTER TOWARDS ME, AND  
3 THERE IS STRICTLY A MERCANTILE TRANSACTION WITH THEM. COULD  
4 I GET THEM TO INVEST THEIR MONEY SO THAT THEY COULD GET PAID  
5 AND SO THAT THE TRIBE COULD GET A CASINO.

6 Q. SO WAS IT YOUR BELIEF OR YOUR UNDERSTANDING AT THE  
7 TIME THAT THE JUDGMENT WAS MADE WAS THERE ANY OTHER SOURCE  
8 TO PAY THE JUDGMENT OTHER THAN THE LEB ERR FUNDS TO WHICH  
9 YOU JUST TESTIFIED?

10 A. YES. THEY COULD HAVE PAID IT PERSONALLY OUT OF  
11 THEIR OWN POCKETS, THEIR OWN EARNINGS. VIRGINIA CARMELO, I  
12 BELIEVE, SHE'S A TEACHER. MAR NAKAWA WAS AN HONOR'S  
13 GRADUATE OF UCLA. SAM DUNLAP WAS AN ARCHEOLOGIST. EDGAR  
14 PEREZ HAD A LONG CAREER IN SOME GOVERNMENT JOB. HE HAD -- I  
15 BELIEVE HE HAD A PENSION. I'M NOT SURE, BUT I BELIEVE THAT  
16 THAT WAS THE CASE; AND CINDI ALVITRI, FOR GOODNESS' SAKE,  
17 SHE HAD A MASTER'S DEGREE AND A PH.D -- SHE'S WORKING ON HER  
18 PH.D. SHE'S RIGHT NOW A UCLA PROFESSOR. SO THEY'RE A WELL  
19 EDUCATED BUNCH. THEY COULD HAVE COME UP BETWEEN THEM TO PAY  
20 THIS IN INSTALLMENTS, BUT THEY DIDN'T FEEL THAT THEY SHOULD  
21 HAVE TO.

22 Q. AND JUST TO CLARIFY YOUR TESTIMONY, IT WAS YOUR  
23 POSITION THAT IT WAS BEST FOR ALL PARTIES THAT THE DEBT --  
24 THAT THE JUDGMENT JUST BE PAID FROM THE LEEB ERR FUNDS TO  
25 MOVE THE PROJECT FORWARD; IS THAT CORRECT?

26 A. LEEB ERR WAS AMENABLE TO IT. THEY KNEW THEY NEEDED  
27 THE VOTES FROM THESE GUYS. I THOUGHT IT WAS -- I THOUGHT  
28 WE'D HANDLE THIS SITUATION VERY CIVILLY. WHEN IT WAS THE --

*ROUGH DRAFT*

*ROUGH DRAFT*

1 A USE OF NOT -- IT WAS NOT TOWARD THE CASINO PROJECT AT ALL,  
2 BUT IT WAS EVERYBODY UNDERSTOOD AT THE TIME THAT WITHOUT  
3 THIS PAYMENT, THERE WOULD BE NO CASINO PROJECT FUNDED BY  
4 LEEB ERR.

5 MR. FORDYCE: OKAY. THAT'S ACTUALLY A PERFECT --  
6 CONSIDERING IT'S STRAIGHT UP NOON -- STOPPING POINT. THAT'S  
7 THE END OF THAT EXHIBIT. SO IF EVERYONE'S AMENABLE, THAT  
8 WOULD BE A GREAT SPOT TO STOP.

9 THE COURT: I THINK SO.

10 MR. FORDYCE: GREAT.

11 THE COURT: YOU YOU MAY STEP DOWN, MR. STEIN.

12 (THE CLERK AND THE JUDGE HAVE A  
13 DISCUSSION OFF THE RECORD.)

14 THE COURT: THE COURT DID TAKE JUDICIAL?

15 MR. STEIN: WE'LL ADMIT EXHIBIT --

16 MR. FORDYCE: YEAH, I BELIEVE SO.

17 THE COURT: THE COURT WILL TAKE JUDICIAL NOTICE OF  
18 THE TWO.

19 MR. STEIN: AND THEN EXHIBIT -- RESOLUTION 39?

20 THE COURT: ALTHOUGH NOT THE TRUTH OF ITS CONTENTS,  
21 BY THE WAY.

22 MR. FORDYCE: YEAH. AND RESOLUTION 39 WHICH IS  
23 EXHIBIT 753. I BELIEVE -- HAT IS THE WAIVER FROM  
24 MS. LAMOTHE. LET ME CHECK TO SEE IF IT WAS AT LEAST  
25 IDENTIFIED. IT WAS JUST IDENTIFIED.

26 MS. IBARRA: YEAH, I BELIEVE THAT WAS ADMITTED.

27 THE COURT: IT'S RECEIVED.

28 ALL RIGHT. TOMORROW, WHAT TIME?

*ROUGH DRAFT*

*ROUGH DRAFT*

1 MR. FORDYCE: THE SAME, 9:45.

2 THE COURT: THAT'S FINE.

3 SEE YOU ALL TOMORROW.

4 MS. IBARRA: THANK YOU, YOUR HONOR.

5 MR. FORDYCE: THANK YOU.

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*ROUGH DRAFT*