

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.

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1 GABRIELINO-TONGVA TRIBE VS. STEIN, TRIAL DAY 18

2 ROUGH TRIAL TESTIMONY OF JAMES MCSHANE

3 A. James j a m e s , McShane m c capital s h a n e.

4 THE CLERK: Thank you.

5 THE COURT: Thank you you may begin.

6 MS. IBARRA: Sure.

7 Q. BY MS. IBARRA: Mr. McShane can you please explain
8 how you are related to plaintiff Gabrielino-Tongva Tribe?

9 A. I was introduced to the tribal council at a
10 meeting called by Mr. Stein back in -- you'll have to help
11 me with the year, I think it was 10 years ago.

12 Q. 2006 does that sound right?

13 A. That does sound right.

14 Q. So sometime in the fall maybe?

15 A. It was in September.

16 Q. Okay. And do you recall how he contacted you?

17 A. A telephone call out of the blue basically. I had
18 known Jonathan from some prior litigation many years before
19 that and Mr. Stein had on occasion invited me to intend a
20 couple of Lakers games at Staples Center and that was
21 really the extent of our relationship and then Mr. Stein
22 called and asked if I would be interested in making a
23 presentation to the tribal council with the idea that
24 perhaps my firm would be hired to serve in some counsel
25 capacity.

26 Q. I'm going to show you an e-mail -- I'm going to
27 show you a document and see if you recognize it, this has
28 not been previously marked Your Honor.

1 THE COURT: Not previous marked.

2 MS. IBARRA: (Ditto), it's new.

3 THE COURT: Get your binders out.

4 MS. IBARRA: It's not in the binders.

5 THE COURT: Oh that's what you mean, I'm sorry.

6 MS. IBARRA: Not previously marked, not previously
7 put in the binders.

8 MR. STEIN: Which is exhibit.

9 MS. IBARRA: It's 247 and see if I identifies it.

10 THE COURT: Do you have the court's exhibit list.
11 And now this is numbered.

12 MS. IBARRA: Yes.

13 THE COURT: Which number.

14 MS. IBARRA: This would be 247.

15 THE COURT: E-mail is that what it is.

16 MS. IBARRA: It's an e-mail.

17 Q. Mr. McShane do you recognize this document?

18 A. I do.

19 Q. This would be 247. So is this an e-mail from you
20 to -- who's Mr. Scott?

21 A. Mr. Scott at the time was one of the -- one of my
22 partners at Sheppard Mullin in the banking and finance
23 department.

24 Q. Can you relate what the substance of the e-mail
25 is?

26 A. Well Mr. Stein had related to me that he had been
27 working for quite a number of years with an Indian tribal
28 council toward a number of things and he told me that the

1 tribal council or the tribe or its gaming authority needed
2 some outside legal advice. I am a litigator, Mr. Stein had
3 told me that there was some litigation pending that they
4 may need some assistance on but it seems to me that the
5 primary thing that the tribal council needed at least as
6 related by Mr. Stein was some advice regarding its tribal
7 affairs and in particular efforts to move forward with a
8 casino project. Mr. Scott is one of the leading experts in
9 the country on casino gaming for Indian tribes and so it
10 seems to me to make sense that if the tribe was going to
11 retain us that I would want to have something like Mr.
12 Scott involved and probably to lead the effort.

13 Q. Right. Okay. So just to be clear because Mr.
14 Stein's name doesn't appear in this e-mail, so you're
15 referring to Mr. Stein and the Gabrielino-Tongva Tribe in
16 this e-mail?

17 A. I was, yes.

18 THE COURT: When you say -- your reference is that
19 a friend is an officer and in-house general counsel for an
20 Indian tribal council, the present and officer and in-house
21 general counsel is referring to Mr. Stein is that correct?

22 A. That's correct.

23 THE COURT: And Indian tribal council is referring
24 to the plaintiff here Gabrielino-Tongva Tribe?

25 A. I can't tell you that I know who the plaintiff is
26 here Your Honor but it is the Gabrielino-Tongva Tribe.

27 THE COURT: Oh okay?

28 A. That I was referring to.

1 THE COURT: Okay thank you.

2 Q. BY MS. IBARRA: And the tribal council being the
3 governing body of Gabrielino-Tongva Tribe as you understood
4 it at that time?

5 A. That is how I understood it, correct.

6 Q. Okay. And so you said you do -- the reference is
7 to Mr. Stein. Do you recall why you called him an officer
8 and an in-house general counsel?

9 A. That was certainly my impression at the time. I
10 can't say that Mr. Stein used those precise words with me
11 but everything that he discussed with me indicated that he
12 was an officer and that he was deeply involved in the legal
13 affairs of the tribe.

14 Q. Okay. So that was your understanding at the time.
15 Thank you. So moving on to a different document. Oh
16 actually let me just ask you about the first time that you
17 met the tribal council, the members of the tribal council?

18 A. Yes.

19 Q. Was that after this e-mail?

20 A. My recollection based on the documents that you
21 showed me this morning.

22 Q. Yes.

23 A. Is that I first met anyone from the tribal council
24 the following evening which would have been Tuesday,
25 September 19th, 2006.

26 THE COURT: When you say the following evening,
27 this e-mail is dated Monday, Tuesday 18th, 2006, p.m.?

28 A. Yes the next day.

1 Q. BY MS. IBARRA: So I'll go to the next document
2 that would refresh your recollection which is -- this has
3 been previously marked as 245. Is this the same date Mr.
4 McShane as the day you met them?

5 A. Yes it is.

6 Q. Do you recall receiving this e-mail?

7 A. I either -- first of all the answer is yes. I
8 either received it in my office or Mr. Stein copied it for
9 me and handed it to me when I went to his office. I went
10 to Mr. Stein's office late in the afternoon and met with
11 him prior to meeting anyone from the tribe and so I either
12 got it just before I left to go to Mr. Stein's office or
13 Mr. Stein gave me a copy of it when I got there.

14 Q. Okay. But you didn't draft this e-mail or dictate
15 it to Mr. Stein?

16 A. No.

17 Q. So I will refer to another document that has been
18 previously marked which is Exhibit 67 and I'll get you a
19 copy of that.

20 THE COURT: Do you have a copy of that one.

21 THE CLERK: It should be in the binder.

22 THE COURT: Which exhibit is it in the binder.

23 MS. IBARRA: '67 and I have a loose leaf if that
24 makes it easier for the Court.

25 THE COURT: No I have it. No it's blank in here
26 but it's loose, it's loose somewhere, but I've seen it, I
27 know it's loose.

28 MS. IBARRA: But you can have another copy and

1 insert it in there if it's easier.

2 Q. Mr. McShane do you recall this document?

3 A. I can only tell you that I recall something like
4 this document. Whether this is the actual document that
5 Mr. Stein prepared for the September 19th meeting or not, I
6 am not certain. And the reason is that my -- I have a
7 recollection that there was a handout. My recollection was
8 that it was all on a single page, this is a two-page
9 document. The general subject matters are familiar to me
10 but I can't tell you for certain that this was the happened
11 out.

12 Q. Because your recollection was that it was only one
13 page?

14 A. That's my recollection, yes.

15 Q. So do you -- comparing exhibit 245 and '67, 245
16 being the September 19th e-mail from Mr. Stein to you and
17 then '67 which is called the fiduciary duties report, do
18 you recall that this was mostly Mr. Stein's ideas that are
19 reflected in '67 or did you contribute to '67, if you
20 recall at all?

21 A. I did contribute to '67.

22 Q. You did contribute to '67, not to -- not to the
23 e-mail however, that e-mail waters not your dictation, you
24 didn't contribute to that?

25 A. I nothing --.

26 MR. STEIN: Objection leading the witness.

27 THE COURT: Overruled, it's just recapping the
28 testimony. Overruled?

1 A. I had nothing whatever to do with the September
2 19th e-mail.

3 MS. IBARRA: Okay.

4 Q. BY MS. IBARRA: And then so you said that you
5 arrived at the -- Mr. Stein's law office?

6 A. Yes.

7 Q. And that is either when you -- you either had
8 reviewed --.

9 THE COURT: Well backup, who invited you to the
10 office?

11 A. Mr. Stein did.

12 THE COURT: Okay and what did he say the purpose
13 of the meeting was?

14 A. The purpose of the meeting, it was going to be a
15 pre meeting to discuss a presentation that I would give in
16 which in essence I would be presenting Sheppard, Mullin's
17 credentials to the tribal council. The idea was that Mr.
18 Stein had told me that it was solely the tribal council
19 that had the authority to hire counsel and therefore, I
20 would need to speak with them and see if the tribal council
21 members were interested in hiring my firm as its counsel.

22 THE COURT: For all purposes, for a limited
23 purpose or was that discussed at all?

24 A. A number of issues were discussed. When I
25 received the e-mail, exhibit 240 whatever it is.

26 THE COURT: 245.

27 MS. IBARRA: 245?

28 A. 245, I was concerned because I interpreted much of

1 what was on that e-mail as kind of accusatory and not
2 really in the spirit of what I was going to be there for
3 which was to make a presentation and hopefully result in
4 engagement by the tribal council. And so --.

5 THE COURT: So we need to -- I guess we need to
6 back up and find out what was the conversation concerning
7 the e-mail?

8 A. I told Jonathan that I would like to make the
9 presentation, I would like to discuss some very basic
10 issues that would really present our firms credentials. I
11 understood from Mr. Stein that some of the outstanding
12 issues involved a piece of litigation about which I knew
13 nothing, it was something to do with Hollywood park so I
14 was going to tell the tribal council of course that I could
15 handle litigation, I'm a general litigator, I've been
16 litigating now for 30 some years. Other issues that Mr.
17 Stein had discussed with me involved the makeup of the
18 board, general issues about -- Mr. Stein had some concerns
19 about the tribes banking records, he had some concerns
20 about --.

21 THE COURT: Did he give you any details about the
22 tribes banking records, and this is all in connection with
23 this e-mail, okay?

24 A. Yes and --.

25 THE COURT: Let me ask you this question, were you
26 on the phone with Mr. Stein while he was drafting an e-mail
27 if you know?

28 A. No I'm sure I was not.

1 THE COURT: When you say you're sure you were not,
2 how do you know that?

3 A. I would not have discussed these issues -- at the
4 time I don't think I knew who Aronson was in number one, I
5 know that Mr. Stein told me -- see there's a reference to
6 Number 6 to Dunlap B K problem, I wouldn't have known what
7 those things were to dictate anything about them. I know
8 that once I got to Mr. Stein's office he told me about his
9 concerns about Mr. Dunlap. He had some concerns about as I
10 understood it, there was an organization out there that was
11 going to investor lend money and that some money had become
12 available, the banking records, Mr. Stein said he had been
13 removed as the signatory on the bank account and he seemed
14 quite upset about that and that he wanted my presentation
15 to include a discussion about the banking records. I want
16 today steer away from that because I didn't [WHRAUPBT] to
17 be accusing people that were going to hire me about doing
18 anything wrong so what I was trying to get across to
19 Jonathan that what I had planned to do was give a very
20 basic presentation about some things that an organization
21 and in particular a board that would be managing an
22 organization, things that they needed to become aware of
23 and in these subject matters we could offer some
24 assistance. And so when you look at exhibit I think it's
25 '67, what I see here is the numbered points are certainly
26 things I spoke to Jonathan about in the context that I
27 would like to go over things like that at the meeting. It
28 was certainly not a fiduciary duties report but the idea

1 that an organization, that a board managing an organization
2 should follow their constitution and ordinances and that
3 people on a board need to avoid self dealing and things
4 like that. What I don't have any real memory of is how
5 these bullet points under the numbered points really came
6 about. They certainly were not anything that I typed or
7 dictated and talked to Jonathan on. Certainly the general
8 idea about compliance with contracts, the general idea that
9 a board ought to be aware of fraudulent transfer issues,
10 those very general topics were things that I thought would
11 be useful to discuss in order to present our credentials
12 and I did so once the meeting started. I probably spoke
13 for 10 or 15 minutes and that was about it.

14 THE COURT: Okay so when you got to the meeting,
15 did you see this document or something like it?

16 A. There was a handout. And Mr. Stein prepared it at
17 the pre meeting, he had his computer on and we talked about
18 some of thieves general topics, such as the ones listed
19 here as number one two three and four.

20 THE COURT: So that's what happened when you were
21 at the meeting with him, that he asked you to go to his
22 office and you sat down at the computer and he started
23 typing this what you were typing about or --?

24 A. The idea was these were topics that I would cover.

25 Q. BY MS. IBARRA: But to be clear Mr. McShane you
26 didn't type them?

27 A. Oh no, I didn't type a single word of them I
28 didn't have a computer.

1 Q. Right. But did you observe Mr. Stein typing
2 them?

3 A. Yes.

4 Q. Do you recall him putting it on the tribal council
5 letterhead?

6 A. I recall he printed it it up and I believe what
7 was passed out before the meeting was on tribal council
8 letterhead, yes.

9 Q. Billion the tribal council arrived, do you recall
10 who went through these bullet points and discussed them
11 with the tribal council?

12 A. Oh it was me.

13 Q. It was you by yourself or you with Mr. Stein?

14 A. Mr. Stein was certainly there. I think he
15 basically gave me 10 or 15 minutes with the tribal council.
16 I don't recall any real discussion here until I basically
17 went through these points and then everything shall we say
18 blew up.

19 THE COURT: Well did he explain to you why he
20 wanted you to come in and explain fiduciary duties to them?
21 What was the impetus for a need to explain fiduciary duties
22 was it just a generic hey just come in and explain it to
23 him or was it there's a problem and the problem is this and
24 that's why I want you to explain this to the tribal
25 council?

26 A. There were a couple of problems that Mr. Stein
27 outlined. One is that he seemed to have problems with Ms.
28 Aronson who I understood was the former outside counsel and

1 his --.

2 THE COURT: When you say problems I'm going to ask
3 you he ask if he explained what the problem was?

4 A. He told me that Ms. Aronson had in essence
5 engineered his shall we say out-er as signatory on the
6 tribal council's bank records and that's the bank records
7 were either in her hands or somebody else's hands. During
8 the pre meeting he asked me to call Ms. Aronson to ask
9 about the -- where the [PWA*RDZ] were and I did so and she
10 simply told me that she did not have them and that when Mr.
11 Dunlap arrived at the meeting he should be asked about them
12 and so after I gave this brief presentation, Mr. Stein
13 asked Mr. Dunlap where are the [PWA*RDZ] and Mr. Dunlap as
14 I recall said they're in a safe place. Mr. Stein demanded
15 that they be turned over to him, to Mr. Stein that is and
16 Mr. Dunlap said very quietly that is not going to happen
17 after which Mr. Stein really began screaming and swearing
18 at the tribal council members who were there and the
19 meeting ended.

20 THE COURT: What did he say when he was screaming
21 at them and swearing at them?

22 A. Much of it was quite rude.

23 THE COURT: Pardon?

24 A. It was quite rude. He called them stupid, he said
25 they were going to be sued, he referred very course Lee to
26 Ms. Aronson repeatedly as quote that cunt close quote in
27 fact that was the only way that he referred to her.

28 THE COURT: This was during the council meeting?

1 A. Yes. Oh yes. He yelled at I think the
2 gentleman's name was Mr. Alcala.

3 MS. IBARRA: Yes Mr. Alcala, Martin Alcala?

4 A. And -- Martin Alcala called him stupid, he called
5 Mr. Perez a drunk, he called Mr. Dunlap every name in the
6 book and Mr. Alcala was upset enough that the others walked
7 him out of the meeting, Jonathan walked into his office and
8 I was there alone in the conference room and so I left.

9 THE COURT: And what was -- Dunlap was also
10 accosted or --?

11 A. Verbally yes, very much so.

12 THE COURT: What was Dunlap told?

13 A. That he was going to be sued, that he had stolen
14 the books, just a lot of accusations about how you know Mr.
15 Stein said that he, Mr. Stein had done all this work for
16 all this people, they're ungrateful, they were stupid, they
17 would always be poor and it was -- it was really a tirade
18 of the first order and it was very embarrassing to be there
19 and have to listen to it.

20 THE COURT: And you were left alone with -- did
21 everybody else leave and you were left in the room by
22 yourself and Mr. Stein left and you were left with the
23 tribal council or how did that work?

24 A. The tribal council members walked out with Martin
25 Alcala, Mr. Stein went into his office and I was sitting
26 alone in a conference room and so I thought that there was
27 no further good to be done so I -- I left.

28 Q. BY MS. IBARRA: Did you eventually become engaged

1 by the Gabrielino-Tongva Tribe?

2 A. Yes.

3 Q. So this was after this event?

4 A. It was.

5 Q. How did you become engaged?

6 A. There were a series of meetings, telephone called.
7 After I left Mr. Stein's office on the 19th, the tribal
8 members who had attended the meeting were talking outside
9 and they were very apologetic about whatever had happened
10 and Mr. Dunlap said that either he or someone from the
11 tribe would call me, I believe Mr. Dunlap did call me the
12 next day. At some point we had a meeting at my office with
13 a number of the tribal council members. I can't remember
14 how many meetings there were. In the meantime Mr. Stein
15 had become apologetic, we had a meeting at my office with
16 him and with Mr. Scott, we had drafted up an engagement
17 letter, Mr. Stein said that the tribal council members
18 would have to be -- somebody from the tribal council would
19 have to be the one to sign it so we arranged a meeting with
20 the tribal council members and they decided to hire us but
21 said that they wanted a different engagement letter, one
22 that did not include Mr. Stein because they did not want to
23 have him be their chief executive officer any more.

24 Q. I want to pursue that but before we get there, I
25 want to ask you about several events that pre sided the
26 19th and sorry I didn't put this in order but I wanted to
27 ask you about the communication that's had you with Mr.
28 Stein before the meeting. So on the 19th let me show you

1 Exhibit -- this is a new document. This is going to be
2 148.

3 MR. FORDYCE: Counsel is that the 1237 p.m.
4 e-mail.

5 MS. IBARRA: Yes.

6 MR. FORDYCE: Okay thank you.

7 MR. STEIN: And this is what date.

8 MS. IBARRA: This is on the 19th. .

9 Q. So this is on the date of that meeting -- well why
10 don't you -- I'll let the witness explain what this is?

11 A. I do recognize it, it is a draft that I prepared
12 at Mr. Stein's request.

13 Q. And to clarify, this is before the meeting on the
14 same day?

15 A. Yes. Mr. Stein had -- again he had explained that
16 he had concerns about the -- about being removed as the
17 signatory on the tribal account and he wanted to make sure
18 that the banks didn't honor checks that he didn't -- that
19 he hadn't signed. I believe that Mr. Stein of proposed a
20 much more -- I didn't know what to call it, a letter in an
21 entirely different tone, much more threatening and he had
22 sent me some document to review.

23 Q. So can I refresh your recollection with the actual
24 document, I believe it's the actual document you're
25 referring to which is going to be 249.

26 MR. FORDYCE: And counsel this one that's the
27 Bates number in the lower right that end in 25 four.

28 MS. IBARRA: 25 four, yes.

1 MR. FORDYCE: And it's about four or five pages?

2 Okay thanks.

3 MS. IBARRA: This is a new document Your Honor.

4 THE COURT: This is a already is that what it is.

5 MS. IBARRA: It's an e-mail with an attachment is
6 that right Mr. McShane?

7 A. Well it's an e-mail string with an attachment.

8 Q. So is the bottom the e-mail that I just showed you
9 and then the top is a response from Mr. Stein?

10 A. With the the first e-mail on Page 1 of the exhibit
11 is Mr. Stein's e-mail to me that seemed to -- that
12 certainly follows in order to the 1237 p.m.. What I'm not
13 certain of is the --.

14 Q. The attachment?

15 A. The attached letter, it strikes me and this is
16 really testing my memory.

17 Q. Yeah.

18 A. I believe Jonathan had sent me a draft letter, I
19 suggested one which was way shorter and toned down and my
20 suggestion is the one that appears on the e-mail that has
21 the 1237 p.m. stamp on it. The only other thing [HEUBG]
22 tell you is that Jonathan did not -- my understanding was
23 that Jonathan did not use my ideas at all, he sent the much
24 more Advair [KRA*L] [KWRAL] --.

25 MR. STEIN: Objection facts not in evidence.

26 THE COURT: Well okay.

27 MS. IBARRA: I think we're getting there.

28 THE COURT: Lay a [TPO*UPBGS] foundation. Do you

1 know whether he sent your letter or the other letter.

2 A. Well I know that he didn't because I believe I got
3 a copy of the one that he did send and did not have any of
4 my ideas in it.

5 THE COURT: Well what did it say.

6 MS. IBARRA: Oh I think we have a copy?

7 A. I can't recall what it said.

8 Q. We have a copy so maybe I can -- can I introduce
9 first another letter -- another e-mail from you, this is
10 250, also new.

11 MR. FORDYCE: And down just again just be to be
12 [TKHRAER] this has Bates number four 137 in the lower right
13 four 137.

14 MR. FORDYCE: Thanks very much.

15 Q. BY MS. IBARRA: Mr. McShane does this refresh your
16 recollection?

17 A. Well it's certainly an e-mail that I prepared,
18 they are certainly the suggestions that I gave to Mr. Stein
19 after seeing some draft that he gave me. Whether the draft
20 that I am referring to in the 250 p.m. e-mail is the
21 attachment that appeared on the prior exhibit I can't
22 recall but perhaps I could work it out if I [WREPBT]
23 through this all line by line but I don't have any present
24 recollection.

25 Q. Right.

26 A. Of exactly which letter that I'm referring to when
27 I say I reviewed your draft letter to the banks.

28 Q. Okay.

1 A. But I think the [UGS] suggestions is there are
2 pretty self-explanatory.

3 Q. Right. Can you just read the second paragraph
4 into the record please?

5 A. The draft also stated that quote, the tribal
6 council --.

7 Q. Oh I'm sorry that's the third paragraph, the
8 second paragraph -- the first paragraph only has a line
9 so?

10 A. Oh yes. So you're referring to I think you
11 should.

12 Q. Yes?

13 A. I think you should take out most of the material
14 in the factual background section as it does not add
15 anything to the substance of GT G As request to the bank
16 and some of the statements, particularly those that could
17 be construed as accusations may also create unnecessary
18 risk of liability on the part of GTGA or it's chief
19 executive officer, the points are to advise the bank that
20 A, the change in signatories may not have been done
21 improper, B the purportedly new sole signatories has
22 resigned and three GTGA would like to ensure that no funds
23 are withdrawn until a new signatory is appointed by valid
24 GTGA resolution.

25 Q. So then I will show you another document which is
26 251.

27 MR. FORDYCE: And, again, just to be clear counsel
28 258 is the Bates number in the lower right.

1 THE CLERK: 258?

2 MR. FORDYCE: 251 exhibit but the Bates number in
3 the lower right-hand corner is 258 but the exhibit is 25
4 one.

5 Q. BY MS. IBARRA: Mr. McShane do you recall this?

6 A. I do.

7 Q. So the time seems to follow from the other ones,
8 this is your edits were at 250 and then this is a fax at
9 three 17?

10 A. Yes it's about a half hour after my
11 recommendations.

12 THE COURT: You mean half an hour after you had
13 e-mailed your revisions or your suggestions?

14 A. My suggestions, yes, what I called offering a few
15 modifications.

16 THE COURT: Right.

17 Q. BY MS. IBARRA: And so just for the record can you
18 just read to whom it's a- [TKHRES]-d to and by whom?

19 A. Well, the fax is to me.

20 Q. The fax is to you?

21 A. The letter is addressed to Ms. Marty Basham,
22 B-a-s-h-a-m, Union Bank Vista branch and the letter is
23 signed by apparently --.

24 THE COURT: The re: line says notice of suspected
25 conversion of the tribal gaming authority funds, suspected
26 conversion of the tribal funds.

27 A. That is the re: line is the very truly yours is
28 the Gabrielino Tribal gaming authority indicating signature

1 by Jonathan Stein. There is a signature on the line.

2 Q. Just taking a brief look at the re: line and also
3 substance of the correspondence, does it look like he took
4 your advice?

5 A. Not at all.

6 Q. Just for the record can you after factual
7 background in the first page, can you read the first
8 paragraph after that?

9 A. Right under the words factual back ground.

10 Q. Uh-huh yes.

11 A. It says quote I have worked steadily with the
12 tribe and now the GTGA for five years investor-g over
13 \$200,000 of my personal funds and over \$3,000,000 in my
14 professional time. In May 2006 I arranged for a 21 million
15 dollars revenue participation facility agreement to be
16 funded, a copy of the too many stone is also attached. I
17 don't see the attachment here by the way.

18 Q. Yeah I don't see it either.

19 MR. STEIN: Your Honor I'm [SKWR*UF] just --
20 regarding exhibit 25 one the fax cover indicates 11 pages
21 but this exhibit does not appear to be complete.

22 THE COURT: Okay.

23 MR. STEIN: It ends at Page 4 out of 11.

24 THE COURT: All right thank you for that.

25 MS. IBARRA: Thank you.

26 THE COURT: That clarification.

27 MS. IBARRA: Right.

28 Q. BY MS. IBARRA: So do you recall that there were

1 other pages attached to this?

2 A. As I sit here today I have no idea.

3 Q. So this -- just to clarify, this was your
4 interaction with Mr. Stein before the September 19th
5 meeting in the evening?

6 A. That's correct.

7 Q. And then you had the September 19th meeting in the
8 evening where you actually meet the tribal council. So all
9 of this is before you've heard any of -- so you haven't met
10 the tribal council and you don't know what their side of
11 the story is?

12 A. Correct.

13 Q. So after this, they engage you?

14 A. Yes.

15 Q. And so do they engage you without Mr. Stein, do
16 they have separate meetings with you is that what you said?

17 A. There were separate meetings, yes and when the
18 tribal council engaged us, it was at essentially the same
19 time that they terminated Mr. Stein.

20 Q. Do you recall if you terminated Mr. Stein on their
21 behalf?

22 A. Well I didn't have any authority to do
23 terminating.

24 Q. Right.

25 A. They did the terminating. I recall a letter went
26 out and I believe it was on Sheppard Mullin letterhead,
27 whether I prepared and sent it or Mr. Scott did so, I think
28 that's how it went but I -- I don't have a completely clear

1 recollection, I'd have to look at documents to know who
2 sent the letter.

3 THE COURT: But tribe had -- but you did it at the
4 tribes request or the tribal council's request?

5 A. That's my recollection, yes.

6 Q. BY MS. IBARRA: Do you recall that one of the
7 reasons that they engaged you -- that the tribal council
8 approached you and decide today engage you was concern
9 about certain records that were kept by Mr. Stein or the
10 law offices of Jonathan Stein?

11 A. Yes.

12 Q. Do you recall making a demand on Mr. Stein that he
13 return those records to the tribal council?

14 A. Yes I do recall a demand was made, whether it was
15 made by me or Mr. Scott but a demand was made, yes.

16 Q. Okay. And do you recall who started talking about
17 litigation first in this matter?

18 A. Well I'm not sure what you mean by this matter.
19 There were -- the general topic of litigation first came
20 up, it had to do with some piece of litigation with
21 Hollywood park, I never did see any pleadings so I'm not
22 sure what that suit was about.

23 Q. Okay.

24 A. Mr. Stein had indicated just in his diatribe that
25 if money disappeared there would be litigation and that was
26 the first -- the first time I recall any subject of
27 litigation involving disputes between Mr. Stein and the
28 tribe had come up.

1 THE COURT: When you say diatribe, are you talking
2 about during the meeting when he got upset?

3 A. At the September 19th meeting, yes.

4 Q. So let me ask you about the Hollywood park
5 litigation, the reape he approached you was the tribe needed
6 help with that litigation, do you assume that was the
7 litigation the tribe needed help with.

8 MR. STEIN: Objection leading.

9 THE COURT: Overruled?

10 A. At the time the existence of the Hollywood park
11 litigation seemed to me to be one reason why Mr. Stein had
12 approached, he'd indicated that the tribe needed outside
13 general counsel and that some of the tasks that potentially
14 would be involved might be the Hollywood park litigation,
15 there might be a need for -- he'd indicated labor advice, I
16 wasn't really sure what that meant but I -- as we continued
17 speaking, it seemed to have more to do with disputes with
18 the former general counsel Ms. Anderson-er son -- or Ms.
19 Aronson and possible disputes with Mr. Dunlap over his role
20 on the board, whether he would need to be terminated and so
21 when Mr. Stein had indicated possible labor representation,
22 that's the clarification was that it had to do with Mr.
23 Dunlap and with Ms. Aronson. And then Mr. Stein talked
24 about how the tribe had ongoing efforts to become
25 recognized as a federal tribe and that the process of
26 moving forward with a casino would require certain kinds of
27 legal advice. And so those were all reasons why I
28 understood Mr. Stein had approached us for a whole

1 portfolio of possible legal issues that the tribe and its
2 council need might need to deal with.

3 Q. Did he say or allude to the fact that he had his
4 own disputes with Mr. Dunlap or other people that he might
5 want to sue on behalf of the tribal council.

6 MR. STEIN: Objection.

7 THE COURT: Wait wasn't he on.

8 MR. STEIN: Leading.

9 THE COURT: Wasn't -- I'm confused by the
10 question.

11 MS. IBARRA: Let me try again.

12 THE COURT: Because I thought Dunlap was on the
13 tribal council so.

14 Q. BY MS. IBARRA: Did he mention any potential
15 litigation between himself and the tribal council?

16 A. No, no. What he mentioned with the tribal
17 council, he was hoping to convince Mr. Dunlap to resign
18 from the tribal council. There was -- I don't recall there
19 being discussion about suing Mr. Dunlap separate in
20 connection with this diatribe in which Mr. Stein was
21 accusing Mr. Dunlap of in his words stealing the
22 companies -- or the tribal organizations bank records.

23 Q. And that he -- that was Mr. Stein's own you know
24 potential lawsuit against Dunlap is what --?

25 A. I did not -- I didn't think of it as a potential
26 lawsuit, I heard threats, that's all.

27 Q. I see. With regards to the Hollywood park
28 litigation, so after you become engaged, you had learned

1 that this Hollywood park litigation was ongoing, did you
2 make a demand from Mr. Stein that you know these records
3 regarding this litigation be returned to the tribe --

4 A. I don't recall.

5 Q. -- or to you?

6 A. I don't recall.

7 THE COURT: Okay so just so I'm clear what the
8 question was, whether the witness made a demand on Mr.
9 Stein to return the documents concerning the Hollywood
10 [HR*EURPBLG].

11 MS. IBARRA: Hollywood litigation, I'm just
12 wondering whatever happened to those recollection?

13 A. My recollection is that Ms. Aronson was counsel of
14 record in that case and that once we were engaged she
15 continued litigating the case, we were never engaged to
16 handle that work.

17 Q. Oh so Ms. Aronson remained counsel of record on
18 the Hollywood park litigation?

19 A. Whoever was handling it, my recollection was it
20 was Ms. Aronson and her office but I don't really know, I
21 never saw any records, I did not even see anything that
22 would have enabled us so run a conflicts check to see if we
23 could even take that litigation.

24 Q. Right.

25 A. So whatever happened to that piece, I don't know.

26 Q. Right. So those never came into your possession?

27 A. No.

28 Q. Exam were you able -- were you ever able to regain

1 possession of the tribes business records?

2 A. No.

3 Q. Or membership records?

4 A. No.

5 Q. Do you recall what Mr. Stein's contention was for
6 retaining possession of them?

7 A. I really can't, no.

8 Q. So soon after litigation breaks out.

9 THE COURT: What litigation counsel, I don't know
10 there's been a lot.

11 Q. This litigation, the inn stance [STAPBT]
12 litigation that leads to this trial?

13 A. I'm not sure what the connection between the
14 original lawsuit filed back in 2006 was and today's
15 litigation, I have no idea. I don't know if it's the same
16 case or not.

17 Q. Okay. Well you know it's still about the records,
18 I mean the records are still a key part of this trial?

19 A. Okay.

20 Q. As to who should have gotten possession of those
21 records. So do you recall the negotiations with Mr.
22 Stein's counsel -- so you were relating the tribal council
23 and Mr. Stein had his own separate counsel at some point?

24 A. That's my recollection, yes.

25 Q. And do you recall who filed -- who filed against
26 who first?

27 A. I don't remember who sued first.

28 Q. I'll represent to you that the litigation was

1 filed within an hour of each other?

2 A. It was --.

3 MR. STEIN: Objection facts not in evidence and
4 misstates what the evidence is.

5 THE COURT: Well we can have the clerk look at
6 times.

7 MR. STEIN: That would be fine it would be about
8 four hours difference.

9 THE COURT: Okay so there's a four hour difference
10 between and we can have the clerk figure [OU] who filed
11 first unless you want the stipulation, is there any reason
12 to make the clerk do that or can we stipulate.

13 MR. STEIN: They failed first, Mr. McShane was
14 fast on the draw.

15 MS. IBARRA: Yes so the reason the tribe is the
16 plaintiff was because you filed first but the litigation,
17 Mr. Stein also filed the same day, just a few hours later
18 apparently. Does that refresh your recollection about --.

19 MR. STEIN: Objection leading and compound.

20 A. I generally.

21 THE COURT: Overruled.

22 A. Recall that they were filed very close in time and
23 I will accept the representation that we filed a few hours
24 before.

25 Q. But you don't have any more further recollection
26 about that?

27 A. No.

28 Q. Okay. I don't think anything further unless the

1 court has some more.

2 THE COURT: Well I may have some. We'll see.
3 Cross-examination.

4 MR. STEIN: Your Honor may we start our
5 cross-examination after lunch it would probably save time
6 for Mr. McShane if we got organized.

7 THE COURT: Well the problem is you have somebody
8 coming in at 130 so let's just use whatever five-ten
9 minutes we have.

10 MR. STEIN: Oh sure.

11 THE COURT: At least start.

12 MR. STEIN: Oh absolutely.

13 THE COURT: Let's just start because you have
14 people coming in at 130 both of you.

15 Q. BY MR. STEIN: Mr. McShane let's just go to
16 exhibits 248 and 249, I'm going to kind of put it up on the
17 board to make it faster for everybody?

18 A. I have 249.

19 MS. IBARRA: September 29th, 1237.

20 A. 1237.

21 MS. IBARRA: Yes, p.m.. McShane to Mr. Stein.

22 MR. STEIN: By the way we need to show you Exhibit
23 15, 15 if we can show it to you, we haven't had time to
24 print it out but we can take time if the court would allow
25 us.

26 THE COURT: You can examine I guess while things
27 are being printed.

28 MS. IBARRA: Is this the conflict check, I've seen

1 this but I don't know what the park [-GZ] are. Are you
2 sure those are his notes.

3 MR. STEIN: We'll ask him.

4 Q. As a matter of fact why don't we just start with
5 that one and that would be hopefully a nice single topic
6 before lunch.

7 MS. IBARRA: Can I look at the Bates stamp
8 underneath so I can see who produced it.

9 MR. STEIN: Yeah absolutely.

10 MS. IBARRA: Thank you.

11 MR. STEIN: Let me get this plugged in, forgive me
12 for being a little awkward about this.

13 MR. FORDYCE: Is this Plaintiffs, what exhibit is
14 this.

15 MR. STEIN: 15 15 so it's our rebuttal exhibit
16 that we have labeled 15 15.

17 THE COURT: Okay 15 15.

18 MR. STEIN:

19 Q. And let me give that a little focus Jim, thank you
20 for coming by the way. Do you recognize the records
21 records from Jim McShane to records records?

22 A. I recognize what it is yes.

23 Q. And it's dated September 18th?

24 A. Yes.

25 Q. And were these your checks of the various people
26 identified by Mr. Stein to you.

27 THE COURT: I think this is new, right.

28 MR. STEIN: Yes.

1 MS. IBARRA: Yes.

2 THE COURT: All right?

3 A. I believe that I had called you and asked you for
4 a list of relevant names so I could run conflicts, yes.

5 Q. Right. And you have Gabrielino tribal gaming
6 authority as the client, is that your understanding that
7 you were coming in to pitch that as the Gabrielino tribal
8 gaming authority as the client?

9 A. I specifically asked you who the client would be
10 and that's what you told me.

11 Q. Right and Jonathan Stein is client related, would
12 that be as CEO or another officer?

13 A. Client related in our conflicts world usually just
14 refers to somebody like an individual or an officer who has
15 a relationship with a client, yes.

16 Q. So was it your understanding on September 18th
17 that Mr. Stein was actually still CEO of GT Tribe?

18 A. As of the 18th, yes.

19 Q. And would that be true on the 19th?

20 A. Yes.

21 Q. And the letter that we just reviewed to Union Bank
22 that was dated the 19th?

23 A. Yes. Actually the fax is, I'm not sure the letter
24 was.

25 THE COURT: The letters undated I think?

26 A. That's correct the letter is undated.

27 Q. BY MR. STEIN: But the fax went out on the 19th?

28 A. Well the fax to me went out on the 19th I don't

1 know when it went out to the bank.

2 Q. And so -- and then -- and also your exhibit --
3 Niall what's the exhibit number on the draft letter by Mr.
4 McShane, may I --.

5 MR. FORDYCE: Oh do you want that one, 48 maybe.

6 MR. STEIN: Yeah.

7 Q. Exhibit 248, that was on September 19th right?

8 A. That's the date.

9 Q. And so the McShane draft, draft to Union Bank also
10 has Stein as CEO?

11 A. It does.

12 Q. By the way can you ask you a question, how come
13 there was so much back and forth and [TKHRAFTS] on this but
14 you say there wasn't back and forth on the fiduciary duty
15 report?

16 A. Excuse me?

17 Q. You stated in your testimony that the fiduciary
18 duty report, exhibit -- what's the exhibit number on this.

19 MR. FORDYCE: '67.

20 MR. STEIN: Let me just put a '67 on there.

21 Q. You said the drafts were not he can changed on
22 that and yet here we are exchanging drafts, Mr. Stein and
23 you all day on the same day of a different letter, why
24 wouldn't you exchange drafts of both of those?

25 A. You didn't ask me to.

26 Q. It's not possible that in fact you provided -- Mr.
27 Stein provided some notes, you provided the outline
28 structure, Mr. Stein approved it, go to the pre meeting

1 with Mr. Stein and then Mr. Stein prints it out on tribal
2 stationery and had you bring it out to tribal council?

3 A. Mr. Stein h I washed you type it on your
4 computer.

5 Q. I'm talking about before it was tiled, wasn't it
6 e-mailed to Mr. Stein in this form and that's what had he
7 printed out?

8 A. No.

9 Q. So going back to the records conflicts check, Liz
10 air is viewed as adverse. Was it your understanding that
11 she had resigned as tribal general counsel and that's why
12 she's mark as adverse, not client related?

13 A. No.

14 Q. What is your understanding?

15 A. My understanding is that she was adverse because
16 you accused her of stealing the bank records.

17 Q. So it's your understanding that she was still
18 tribal general counsel?

19 A. At that time I wasn't sure. My understanding was
20 that you were looking for an outside general counsel to
21 replace her, whether she was still the outside counsel then
22 or not I don't know.

23 Q. And wasn't it true that when Mr. Stein was talking
24 about stealing [PWHARDZ] what he was talking about was
25 misappropriation for the casino funds for the casino
26 project by Ms. Aronson and Mr. Dunlap?

27 A. That's what you told me.

28 Q. Right, okay so focusing on Mr. Stein's concerns

1 was that it wasn't the bank records, it's the fact that
2 with the check books they might take all the money from the
3 casino project and misappropriate it?

4 A. That's what you told me.

5 THE COURT: [HREUTSZ] go ahead and write it down
6 but it's lunch so you've used your time wisely.

7 MR. STEIN: And Your Honor I've got plenty more
8 for him.

9 THE COURT: That's fine he'll be back.

10 MR. STEIN: Or we can put him on call if that's
11 preferable to the court.

12 MS. IBARRA: Well it's up to Mr. McShane.

13 THE COURT: Well we'll call you back, we will have
14 to Cal you back?

15 A. Right after lunch or.

16 THE COURT: If you can.

17 MS. IBARRA: Or you can come back on Monday it's
18 up to you?

19 A. It will be better for to get it done today.

20 THE COURT: Okay.

21 MS. IBARRA: Better for us too thanks.

22 THE COURT: We'll see [AUF] the 130.

23 A. These documents just stay here.

24 THE COURT: Yes we'll see you at 130.

25 (Noon break.) 12:01 PM to.

26 .

27 *****.

28 Q. BY MR. STEIN: Okay Mr. McShane again we were

1 looking at the exhibit 1515 and we were going -- we've been
2 through the client related, Elizabeth Aronson was adverse,
3 you then have -- what are these?

4 A. Which are you referring to there.

5 Q. Libra Securities and then the various funds that
6 are listed with Libra Securities [-FRPL] those were names
7 that you gave me when I asked you again whom to run
8 conflicts.

9 Q. And those are the investors, right?

10 A. I don't know.

11 Q. The Libra agreement and the various investors in
12 the Libra agreement does that refresh your recollection?

13 A. I remember the name Libra that's all.

14 Q. So but the idea was that in the cast of characters
15 to run conflicts on, you had the client and the client
16 related, you had the person that might -- that it was
17 accused of taking money and then you had the investors who
18 also might sue over the loss of their money through
19 malfeasance?

20 A. The last part I don't know other than you have
21 told me that they had some role in the investment.

22 Q. But -- and we talked about that Stein's concern
23 was to stop misappropriation of GT Tribe's funds by Aronson
24 and Dunlap would it be funds provided by these verses?

25 A. First of all it wasn't to stop misappropriation,
26 it was the way I understood it to prevent misappropriation,
27 but as I understood it from you, the concern was that money
28 in the tribe's account had come from either lenders or

1 investors, I do not know what the arrange 789 was, it was
2 in the tribe's account so it was the tribes money.

3 Q. Right. And was Mr. Stein's security the
4 possibility of securities fraud lawsuit by the investors if
5 the money disappeared from the tribe's account?

6 A. I don't recall any discussion about securities
7 fraud. I believe that you had indicated that there might
8 be litigation, the nature of the litigation I don't recall.
9 You had told me you had done some research but I don't
10 recall what the nature of the suit might be.

11 Q. Very good. Then one through Five, is that your
12 handwriting?

13 A. It is.

14 Q. Well it's very neatly and well organized
15 [do not|done] Mr. McShane congratulations like that but if
16 you could nonetheless read it to you one at a time just
17 number one and we'll discuss that and we'll move through it
18 quickly?

19 A. Well I think I'd need to see it in main, I'm not
20 sure I can read the first line past tomorrow night meeting,
21 I see the first words are retainer that but I don't know
22 what the rest says.

23 Q. That we are trying to get today?

24 A. I can't read it from here, I'm sorry.

25 Q. Okay that would be retaliation that we're trying
26 to get from Jonathan Stein? And we can print it out I just
27 don't want to take the Court's time.

28 THE COURT: Well do we have a hard copy?

1 A. It looks like that may be what it says you're
2 asking me if I can read it and I don't remember what it
3 says so.

4 THE COURT: Well is there something that can be
5 read.

6 MR. FORDYCE: Your Honor I can print it out Your
7 Honor.

8 MR. STEIN: Niall will print it out, let's move on
9 in the meantime, number, can you read Number 2?

10 A. The tribal council wants money in the brokerage
11 account?

12 A. Signature cards, right?

13 A. I don't know what the first part of that sentence
14 is, something about signature cards.

15 Q. But it says the tribal council wants the money in
16 the brokerage account, so was it the attorney that the
17 tribal council was going to take the money in the brokerage
18 account?

19 A. Actually no, what I was referring to was you were
20 indicating who might have to be the person who wrote the
21 retainer check while these things were worked out because
22 you didn't have access or signatory authority on the
23 brokerage account.

24 Q. And that's why you said tribal -- and that's why
25 you said tribal council wants money in the brokerage
26 account?

27 A. That is -- well that reflects what you told me was
28 that the tribal council wanted the money in the brokerage

1 account.

2 Q. Okay. So then reflecting what I told you, that
3 was the concern expressed to you from Mr. Stein of SMDC
4 that the tribal council wanted to get the money in the
5 brokerage account. Now do you remember --.

6 THE COURT: Is that "yes"?

7 A. All I can say is to the best of my recollection I
8 wrote down what Jonathan told me.

9 MR. STEIN: Uh-huh.

10 Q. And then Number 3?

11 A. The authority and I think that's a reference to
12 the gaming authority is an instrumentality of the tribe,
13 that judgement, Jonathan is CEO of the authority and is the
14 lobbyist for the tribe.

15 Q. Let me stop you there. So it doesn't say here
16 that Mr. Stein is an in-house counsel, it says that he's
17 CEO and lobbyist?

18 A. That's what it says.

19 Q. So would that a correct a -- did you make a
20 mistake in your September e-mail where you called him
21 in-house counsel?

22 A. I don't think so.

23 Q. Why do you say that?

24 A. Because you told me that you gave the tribe legal
25 advice all the time. For example, you told me that you do
26 not legal research on the patriot act and had advised the
27 council or the authority that Mr. Dunlap's travel to the
28 Middle East put the tribe at risk because Mr. Dunlap might

1 be put on a terrorist watch list and that would adversely
2 impact its casino project and might adversely impact what
3 the investors thought.

4 Q. May I pursue that or should I not.

5 THE COURT: No go ahead.

6 MR. STEIN: Very good.

7 Q. Was Mr. Stein's concerns over SMDC and Mr. Stein's
8 legal advice was for SMDC and the lawyer for the patriarch
9 act hired for the SMDC?

10 A. I don't recall any discussion about SMDC at this
11 point.

12 Q. Huh. Weren't you sued by SMDC in the lawsuit?

13 A. I wasn't personally, the law firm was.

14 Q. Right, and the allegation was that the law firm
15 was in fact counsel for SMDC or at least possessed SMDC's
16 information?

17 A. That's what you claimed.

18 Q. Uh-huh [SKP-FPLT] there was a confidential
19 settlement is that correct?

20 A. I don't know, I know it settled but I don't know
21 anything about the settlement.

22 Q. Uh-huh, okay. And then let's move to number --
23 and you also mention in that note that down below,
24 investors haven't met the tribe, would that indicate that
25 you knew there were investors?

26 A. You told me there were verses, I didn't know if
27 they were investors or lenders but I wrote investors there
28 and I understood from you that you did not want the

1 investors to meet tribal members.

2 Q. And Number 4, 21 million dollars from the
3 investors. Wasn't Mr. Stein's concern that some of that 21
4 million dollars might disappear.

5 THE COURT: Here you go.

6 MR. FORDYCE: Oh very good?

7 A. Thank you Your Honor. I still can't read that
8 first line, I'm sorry, the retain [THAER] we are
9 something --.

10 MR. STEIN: Let's keep moving along?

11 A. Where are we now.

12 Q. Okay. Number 4, again wasn't Mr. Stein's concern
13 that the investor money might be misappropriated by the
14 tribal council who had the check books?

15 A. The concern was that whatever money -- I didn't --
16 I don't believe it was 21 million at the time, I think you
17 told me that there might in the future be access to that
18 much money but whatever money was available, that Number 4
19 is an indication only that you told me the investors don't
20 want much contact with the tribe.

21 Q. Yes. And Number 5 says -- what does that state?

22 A. It says that Jonathan Stein wants legal ethical
23 treatment of money.

24 Q. And it says tribal council wants the money, second
25 time you said that isn't it?

26 A. That's not what I said, that's what you said, and
27 I took it down.

28 Q. Okay. But it was the second time that Mr. Stein

1 expressed that concern to you?

2 A. At least a second time.

3 Q. And once again we're more concerned with what Mr.
4 Stein said to you as much as what you said here. So Number
5 6, what did you see Number 6 day?

6 A. Need, counsel needs to understand that if
7 investors will be gone if -- I'm not sure what the next
8 words are, then the next line says the investors have no
9 obligation to fund. And my understanding of that had to do
10 with the point on Number 4, that you had indicated that
11 there are a- future tranches of money that may become
12 available but that if the investors or lenders perceived
13 problems that they didn't have an obligation to advance
14 further funds.

15 Q. And so was not one thing that Mr. Stein asked you
16 then to accomplish, the purpose of your visit was to put
17 back together this horrible conflict without it breaking
18 out into litigation?

19 A. At this point what you had asked me to do is come
20 in, introduce myself to the tribe in order to see if the
21 tribe or its council or authority would retain our firm as
22 counsel and certain I anticipated that one of the roles
23 would be to number one find out what was going on, and
24 Number 2 if there was a problem to give some legal advice
25 that might help turn the situation around.

26 Q. Uh-huh. And Exhibit 67, if we can move to that,
27 the fiduciary duties report, that's the report that you --
28 you went through this with the tribal council in the

1 conference room while Mr. Stein was in his office?

2 A. Well first of all you were not in your office, you
3 were in the conference room. Number 2 --.

4 THE COURT: When you say the [con|could not]
5 [TPREPS] room, you mean as this was all being explained to
6 the tribe?

7 A. Yes Mr. Stein was in the room while I was doing
8 this.

9 THE COURT: Okay?

10 A. He was sitting there. I didn't really go through
11 this, I certainly basically followed the numerical bullet
12 points, yes.

13 Q. So but before then, you had a pre meeting with Mr.
14 Stein right?

15 A. Correct.

16 Q. And during that pre meeting, you gave your input
17 into what became the fiduciary duties report?

18 A. I gave some input.

19 Q. So you want to say some input, not input but some
20 input?

21 A. What I want to get across to you is I did not --
22 not all of these words came from me h some of these bullet
23 points did not, some of them came from you.

24 Q. And some of them came from you?

25 A. That's probably true.

26 Q. Okay. Then can I point you to the bottom of the
27 stationery.

28 THE COURT: Can you identify which ones would have

1 come from you and which ones would have come from Mr.
2 Stein?

3 A. I [S-RPBL] certainly didn't bring up the concept
4 of ultra vires activities, I did certainly talk about the
5 concept of self dealing but for example -- well the example
6 under there receipt of funds from triable or gaming
7 authority account, that did not come from me. Did I
8 discuss about the general concept of avoiding self dealing
9 and how if you don't do that there could be individual
10 liability to a host of people, yes definitely. Under
11 number one the examples gven there about resolutions
12 changing account signatories that did not come from me
13 because frankly I don't think a tribal council resolution
14 changing account signatories is problematic at all.
15 Compliance with contracts, I would not have known what the
16 provisions of the relevance participation agreement were, I
17 believe Jonathan had given me a copy of it but I was not
18 familiar enough to know any of the points there.

19 Q. BY MR. STEIN: So you already had had a copy of
20 the revenue participation agreement you sent me something,
21 I don't remember if it was the revenue participation
22 agreement or not, it might have been, you sent me that and
23 you sent me a copy of a resolution that you had drafted
24 that you hoped the board would sign that night returning
25 the signatory authority to you.

26 THE COURT: So you got a draft from Mr. Stein of a
27 resolution.

28 A. Yes.

1 THE COURT: Okay and did he indicate whether he
2 drafted it?

3 A. Oh yeah he draft [T-D], he told me he drafted it.

4 THE COURT: And do you remember what the
5 resolution was, was it to be presented that night or --?

6 A. My understanding was that it would be presented
7 that night to return the signatory authority or to confer
8 signature authority on Mr. Stein because one of the
9 concerns that he as he has indicated today that he had was
10 that money might be misappropriated unless he was the sole
11 signatory authority and so he didn't want anybody else to
12 be signatory authority, he want [T-D] to be just him and he
13 drafted a resolution to accomplish that.

14 Q. BY MR. STEIN: And Mr. McShane, did that
15 resolution almost identically mark the language of the
16 resolution drafted by Elizabeth Aronson that took him off
17 the signatory authority and Mr. Stein simply took her off
18 and put his name where hers was?

19 A. I have no idea.

20 Q. You have no idea about that.

21 THE COURT: So do you know whether Aronson ever
22 drafted any resolutions or?

23 A. My understanding from Jonathan is that Jonathan
24 drafted all resolutions except one that took him off the
25 signatory as the signatory, I did not understand that Mr.
26 Stein drafted that one because I don't think he would have
27 wanted that.

28 Q. BY MR. STEIN: So the answer is Mr. Stein did not

1 draft that taking him on the signatory?

2 A. My understanding is is that came from somebody
3 else, I don't know if Ms. Aronson did it but my understand
4 diagnose thank you.

5 Q. Thank you Mr. McShane if we can stick to answering
6 the question instead of editorializing.

7 THE COURT: You have stated that the Defendant --
8 he Mr. Stein stated he drafted all the other resolutions?

9 A. Yes.

10 THE COURT: Okay. Except for the one that took
11 him off the act as a signatory of the account?

12 A. Yes.

13 Q. BY MR. STEIN: And that one was identical to the
14 one that he draft that simply put him on is it.

15 MS. IBARRA: Objection.

16 MR. STEIN: And took Elizabeth Aronson off of it.

17 MS. IBARRA: Objection misstates testimony?

18 A. I don't know about that, I don't know that I ever
19 saw that resolution.

20 MR. STEIN: Uh-huh very good.

21 Q. And let us go through these points here, point
22 number one, follow counsel and gaming authority
23 constitution ordinances and documente. Actions outside of
24 the authority are ultra vires and gives rise to personal
25 liability. Was that in connection with Mr. Stein's concern
26 that the tribal council would take the check books that
27 they now controlled and simply miss appropriate up to
28 \$898,000?

1 A. That's not how I understood that, no.

2 Q. How did you understand that?

3 A. That I was going going to in presenting my
4 credentials to the authority tell them that one of the
5 things that a board needed to be aware of was they should
6 follow their own rules and that if you don't do that, if
7 you do things outside of those rules, it's just basically
8 an ultra vires, you had brought up the concept of ultra
9 vires and I had agreed with you that if you are on a board
10 and you act outside of your authority you're acting ultra
11 vires and that's how I understand that particular bullet
12 point got in there.

13 Q. Oh so you're saying that does not reflect Mr.
14 Stein's concern over [ULT] [SRAOEURZ] activities where they
15 might misappropriate the tribes funds and give rise to
16 their personal or council liability?

17 A. I didn't connect it with any particular act. I
18 was speaking very generally of the concept of ultra vires
19 activity, that's how I present [T-D] to the council and
20 that's how I understood.

21 Q. Right.

22 A. It got in the document that way.

23 Q. Right. And Number 2 avoid self deal, creates
24 individual liability to investors and possibly to the
25 tribe. You don't -- did that have to do with Mr. Stein's
26 concern that with control of the check books they would
27 simply misappropriate up up to \$898,000?

28 A. Well you told me that was your concern. I didn't

1 necessarily connect that particular bullet point with any
2 particular concern. This was just basic discussion,
3 talking points about what a board member needs to do or not
4 do and the possible risks of what would happen if the board
5 member did not follow the rules against self dealing.

6 Q. And then compliance with contracts, did Mr. Stein
7 express you his concern that if the tribe did take the
8 money and use it for non casino purposes that it would
9 violate restrictions on invested funds, it would violate
10 budgets that had been approved and that it would not
11 represent best efforts that was required with the Libra
12 agreement?

13 A. Those are all things that you told me.

14 Q. Number 4, fraud transaction Tran law. Did Mr.
15 Stein tell that you his concern on behalf of SMDC was that
16 they would fraudulently convey money from GT Tribe to
17 themselves leaving up paid creditors such as SMDC or Crane?

18 A. Actually, no. I think that the whole discussion
19 about fraudulent transfer law came from me and not from me.

20 Q. And what was the concern that you expressed?

21 A. It was not a concern. It was a simple point about
22 fraudulent transfer law that if funds are fraudulently
23 transferred, the person responsible for fraudulent transfer
24 may incur liability to a number of different persons or
25 organizations depending on the facts.

26 Q. And would that liability include liability to
27 unpaid creditors such as SMDC?

28 A. Anything about what SMDC was but under certain

1 circumstances, liability can be to an unpaid creditor, any
2 kind of unpaid creditor under fraudulent transfer law
3 depending on facts.

4 Q. And did you notice on the stationery it listed the
5 tribal development officer Jonathan Stein of SMDC?

6 A. No.

7 Q. And did you notice that the tribal general counsel
8 was listed separately as Rae Lamothe?

9 A. I did not.

10 Q. And is it your understanding that Rae Lamothe was
11 a predecessor to Liz Aronson?

12 A. I do not know.

13 Q. Very good. Then let's turn to the lawsuit, I'd
14 like to show you exhibit 57 two and then three and four so
15 I'll try to pull them all up in order.

16 MR. FORDYCE: And those are all already been
17 identified and admitted.

18 THE CLERK: One more time 57 two.

19 MR. FORDYCE: 57 two 57 three 57 four.

20 MR. STEIN: 575 I'm sorry.

21 THE CLERK: I don't have 57 four.

22 MR. FORDYCE: Is it 575.

23 MR. STEIN: 575 and 57 six.

24 THE CLERK: I don't have 57 six.

25 MR. STEIN: Niall could I bother you to find for
26 this we're going to run out of the juice pretty soon.

27 THE COURT: Can I ask you a question the e-mail at
28 the top of the notes it appears to be this is something

1 state recognized tribe not federally recognized.

2 MS. IBARRA: What exhibit is that Your Honor.

3 THE COURT: This is the e-mail conflicts checks.

4 MS. IBARRA: What's the date on it.

5 THE COURT: There's a second page what is that
6 referring to?

7 A. It says there's a state recognized tribe not
8 federally recognized, and then it follows a state
9 recognized tribe on a state reservation. The understanding
10 I had from Mr. Stein is that the Gabrielino-Tongva Tribe
11 has been seeking [TPOEUR] a long time to obtain federal
12 recognition because federal recognition is important to a
13 host of benefits and other -- other matters, for example I
14 believe all tribes that operate casinos are federally
15 recognized and my understanding was one of the things that
16 Mr. Stein was trying to do is obtain a formal -- either to
17 get federal recognition or to [STEZ] state recognition, get
18 the state to change the law so that the non federally
19 recognized tribe would have the authority under California
20 law to develop and operate a gaming casino. I believe at
21 the time and it may still be the case that if a tribe has
22 only state recognition, they may not be able to get into
23 the casino business in California.

24 THE COURT: So you had a discussion about that
25 with Mr. Stein.

26 A. Yes. And my notes obviously here are pretty
27 sketchy but that's what my understanding was and that you
28 know obtaining additional benefits and additional abilities

1 to do things as a tribal organization, it's much easier to
2 do those things if you are a federally recognized tribe and
3 the Gabrielino-Tongva I believe at one time had that and
4 many, many decades ago lost it and are in the -- have been
5 in the effort for a long time to try to get that back.

6 THE COURT: And what does this mean, Aronson has
7 been quote helping unquote the tribe, J S which [A*] I'm
8 assuming is Jonathan Stein needs a loyal counsel?

9 A. That's what he told me. Which Aronson has been
10 quote helping closed quote the tribe, my understanding from
11 what Mr. Stein was telling me was that there were -- there
12 seemed to be a division between himself and Ms. Aronson and
13 that Ms. Aronson -- I think the words that Mr. Stein used
14 were a palace coup that somehow she was somehow taking over
15 responsibilities that he thought he should have and that
16 she was becoming or had been a device I have influence and
17 that she was kind of quote helping the tribal members or
18 the board members, being on their side in disputes with
19 Jonathan and Jonathan told me -- his words to me were I
20 need a -- I need an outside counsel who's my guy, not
21 somebody's who's going to be involved in whatever Ms.
22 Aronson was -- he thought Ms. Aronson was involved with.

23 THE COURT: So he was saying had he needed a loyal
24 tribal council.

25 A. Loyal -- I understood it to mean loyal outside
26 legal counsel, somebody that would be -- in retrospect I
27 interpreted it meaning he wanted somebody to do his bidding
28 and be a yes man.

1 THE COURT: Well I guess what I'm saying is
2 he's -- Aronson was helping the tribe usurp his authority I
3 guess is what I heard had you say, palace coup, I guess?

4 A. Yes that's certainly how I understood it.

5 THE COURT: And J S needs a loyal counsel so did
6 you interpret that as Aronson is disloyal to Jonathan Stein
7 or --?

8 A. Yes yes.

9 THE COURT: And that he needed somebody like
10 Aronson to be loyal to him?

11 A. He wanted an outside counsel that was going to
12 work with him instead of against him, let's put it that
13 way.

14 THE COURT: Okay.

15 MR. STEIN: May I --.

16 THE COURT: No I need to finish this note.
17 Meeting counsel to decide if J Stein gets?

18 A. The signature rights to the accounts. That's what
19 I was referring to earlier, the meeting was going to be the
20 next night and one of the things that Mr. Stein and I
21 suggested was that I would present my credentials to the
22 tribe as a possible counsel and he told me that one of the
23 things that was going to happen at the meeting after I gave
24 any presentation was that he was going to present a
25 resolution to get signature rights to the accounts that he
26 told me he was concerned about.

27 THE COURT: And 1245 what happened at the meeting,
28 and is that what precipitated the out burst that the

1 resolution wasn't passed or?

2 A. I don't know that the resolution ever got voted
3 on.

4 THE COURT: Oh?

5 A. There were certainly some preliminary discussion
6 about Mr. Stein demanding account signatory authority back
7 and Mr. Dunlap said Jonathan that is not going to happen
8 and Jonathan asked where are the check books and the bank
9 records and Mr. Dunlap said they are in a safe place, they
10 will not be delivered over to you and Mr. Stein says then
11 you guys are going to get sued and he began yelling at them
12 and telling them that they were violating all the things
13 that I just talked about shall they're acting ultra vires,
14 you know they were risk-g, violating agreements and things
15 that far nature and things went downhill quite quickly.

16 THE COURT: So there was a discussion but this
17 resolution was never presented but there was discussion
18 about it that's what led to the outburst?

19 A. I don't remember the resolution ever actually
20 getting presented. I remember the discussions quite
21 clearly but whether the resolution ever got handed out to
22 people, I'm not sure. I know it was there at the meeting
23 but whether anybody made a formal kind of board type
24 resolution to read it or consider it or take minutes about
25 it, I don't know.

26 THE COURT: All right.

27 Q. BY MR. STEIN: Mr. McShane.

28 THE COURT: Go ahead.

1 MR. STEIN: If you --.

2 Q. Didn't loyal counsel and I'm sorry to bring up a
3 sore point because our dispute ended a long time ago but
4 didn't loyal counsel wanted you to [PHAOEPB] Stein wanted
5 to patch [TUP] or he wanted you to be SMDC's counsel and
6 sue these guys for taking the money and putting everything
7 that had been built for five years at risk ?

8 A. You --

9 Q. And that's what loyal counsel meant?

10 A. You never once even suggested that I represent
11 SMDC against anybody.

12 Q. Exhibit 249 can we look at that please.

13 MS. IBARRA: 249.

14 MR. STEIN: These are not numbered Your Honor.

15 MR. STEIN: Let me see if we can find it.

16 MR. FORDYCE: 249 is the Tuesday September 19, 249
17 p.m. it's a small package starting with the Bates number in
18 the lower right-hand corner.

19 A. I think we've got it Jonathan.

20 THE COURT: Do you have it?

21 A. That's the one.

22 Q. BY MR. STEIN: So can you read point Number 3?

23 A. Bring an ACR A and let's be sure of its terms
24 first. I'll give you Ah check from my funds as the G F G A
25 is I am pour tuned.

26 Q. Wasn't that an indication that SMDC would retain
27 you and wanted to see your attorney client retainer
28 agreement first and if you could patch everything up at a

1 later day you might transition to tribal general counsel
2 should Elizabeth Aronson be replaced but you were first
3 supposed to get a check from Mr. Stein to be loyal counsel
4 to SMDC and that's why you were named in the lawsuit?

5 A. No.

6 Q. Very good thank you. Moving on to the now -- to
7 the termination and lawsuit starting with the October 3
8 termination letter by McShane.

9 THE COURT: Which exhibit are you referring to.

10 MR. STEIN: I think it's 57 one is where we're
11 going to start and we're going to try to go through this
12 quickly as the core has indicated.

13 Q. Is this your letter -- let me -- [TK-TS] a little
14 harder up here, is this your letter find by [SKWRA*EUPLZ]
15 [SHA*EUP] for Sheppard, Mullin?

16 A. I certainly signed it.

17 Q. And did you also sent it to Ken Sulzer attorney
18 for SMDC?

19 A. I did.

20 Q. And in the first paragraph, does it indicate that
21 on September 9th Mr. Stein communicated his resignation but
22 it was not accepted until October 3?

23 A. That only says that you communicated your
24 resignation as chief executive officer of the
25 Gabrielino-Tongva Tribal gaming authority on September 9th.

26 Q. And it says the tribal, could you please read this
27 sentence please?

28 A. The tribal council has determined that it is in

1 its best interests, as well as the best interests of the
2 GTGA and the Gabrielino-Tongva Tribe, (the tribe), to
3 accept your resignation effective immediately.

4 Q. So at the time the Union Bank letters were
5 writtten, at the time the Wells Fargo letters on September
6 19th by Mr. Stein, he could sign it as chief executive
7 officer of the GTGA because his resignation was not
8 accepted until October 3?

9 A. I don't know. I don't think I knew when those
10 letters went out that you had communicated your
11 resignation.

12 Q. Sure. And then of course would that be consistent
13 with the draft letter that you provided to Mr. Stein --
14 Niall the number please -- that said Mr. Stein, why don't
15 you try to write this, I am chief executive officer of G
16 26789 G A.

17 MR. FORDYCE: 248.

18 MR. STEIN: 248, exhibit 248?

19 A. I'm not sure what your question is.

20 Q. BY MR. STEIN: Is it correct that your draft
21 letter is consistent because it names Mr. Stein as CEO on
22 September 19th?

23 A. That's what it says.

24 Q. And then further here you then terminate the SMDC
25 agreement?

26 A. That's what it says.

27 Q. And that's October 3?

28 A. Whatever the date is on that letter, I'm sure is

1 accurate.

2 Q. And it's a 30-day notice?

3 A. That's what it says.

4 Q. And within that 30 days you actually filed the
5 lawsuit on November 2nd before the 30 days were even up; is
6 that correct?

7 A. I don't recall the date but I'll accept your
8 representation.

9 Q. Niall -- do I need to pull up the initial
10 complaint or can we agree that it's November 2nd.

11 MS. IBARRA: It's November 2nd.

12 MR. FORDYCE: I think we've stipulated multiple
13 times it's November 2nd.

14 THE COURT: November 2nd there's a stipulation.

15 Q. BY MR. STEIN: Okay so McShane files complaint
16 before the 30-day notice period is over.

17 MS. IBARRA: Objection misstates facts, facts not
18 in evidence.

19 MR. STEIN: Is that your understanding Mr.
20 McShane.

21 MS. IBARRA: October has 31 days so it's the 30th
22 day.

23 MR. STEIN: ?

24 A. I think it's the 30th day.

25 MS. IBARRA: It's the 30th day.

26 MR. STEIN: Forgive me, is that the complaint
27 exactly when the 30 days is over.

28 THE COURT: I see you putting I couldn't be

1 fingers up.

2 MR. FORDYCE: I'm sorry Your Honor.

3 THE COURT: I'm sorry that was funny.

4 MR. FORDYCE: Yeah.

5 THE COURT: Okay so the question is was it 30 --
6 exactly 30 days is think is the question?

7 A. It looks that way.

8 Q. BY MR. STEIN: So you gave a 30 day termination
9 notice and on the 30th day you filed the complaint?

10 A. I don't remember it but if those days are correct
11 then you're right.

12 Q. And then Exhibit 572. Forgive me I think I closed
13 it by mistake. Do you recall a letter on October 5th in
14 response to your October 3 letter?

15 A. Do I recall it, no.

16 Q. Is that September to James McShane?

17 A. Yes, it is.

18 Q. And in this letter they acknowledge receipt of the
19 termination?

20 A. That's what it says.

21 Q. And it made a demand for payment?

22 A. That's what it says, the letter says whatever it
23 says.

24 Q. In light of the October 3 notice, demand for
25 payment is made?

26 A. That's what it says.

27 Q. Can you read this sentence place, this paragraph
28 plays?

1 A. Absent a satisfactory global resolution, developer
2 shall promptly seek enforcement of all its rights and
3 remedies under the development [TKPWRAO*EPL] agreement in
4 the proper forum against all necessary parties. Because
5 such a course of action may negatively impact the ultimate
6 end towards which the parties have been working these past
7 Five and one half years, which would not be in anyone's
8 best interest, we are hopeful that the parties can reach a
9 mutually acceptable resolution to this dispute.

10 Q. Do you recall any calls from Seyfarth Shaw trying
11 to seek a resolution to the dispute short of litigation?

12 A. No.

13 Q. Did you take this as an indication that SMDC and
14 its lawyers would like to resolve things short of
15 litigation?

16 A. I don't remember.

17 Q. Can you read that third sentence please, that
18 paragraph?

19 A. To avoid enforcement action and begin working
20 towards resolution, we look forward to receiving a prompt
21 response from you acknowledging receipt of this letter and
22 advising us regarding the tribal council's position. Thank
23 you for your time and attention to this very important
24 matter.

25 Q. Did you take these two paragraphs as an attempt to
26 resolve things short of a lawsuit that might scare away the
27 investors?

28 A. I don't remember.

1 Q. Can we go to exhibits 57 three, addressed to James
2 McShane and William Scott. Do you recall that sir?

3 A. I don't have a present recollection of it, no.

4 Q. Were at Sheppard, Mullin at that address?

5 A. Yes.

6 Q. Would it refresh your recollection by reading
7 that, that paragraph right there, we note. Please read it?

8 A. We note with concern that SMDC established an
9 attorney-client relationship with Sheppard, Mullin in
10 several lengthy and in depth consultations prior to its
11 work for the tribe. Your question is does it refresh my
12 recollection and the answer is no.

13 THE COURT: Did you have such a relationship with
14 SMDC?

15 A. No.

16 THE COURT: Did you ever have conversations that
17 you considered to be protected by the attorney client
18 privilege?

19 A. Regarding SMDC, no, never.

20 Q. .

21 Q. BY MR. STEIN: But that did result that years of
22 litigation over that and a confidential settlement?

23 A. It resulted in a litigation, I believe it was
24 settled, I've never seen the agreement, I don't know it
25 it's confidential, I assume that it is however, I believe
26 that it [R*] resulted from the citizenship [APBS] by you of
27 a nuisance value 998 offer.

28 Q. Okay. Can I ask you to read that paragraph?

1 A. [#1*78D] has asked us to delay filing the
2 complaint while we attempt to reach a resolution of the
3 disputes set forth in the complaint. We hope a
4 professional mediation may be undertaken in sufficient time
5 prior to the up coming tribal member meeting on November 18
6 to allow the parties to implement a mediated solution in a
7 manner beneficial to [TRAO*EUFP LZ] and progress on the
8 casino project. SMDC has also asked [UGS] to delay filing
9 [PWHAUZ] of the reported overwhelming response of tribal
10 members who seek a tribal member meeting and support Mr.
11 Stein's re appointment to his former position with the
12 tribe.

13 Q. And with that draft complaint in your possession,
14 in fact you filed just a few days later your complaint
15 before that draft complaint -- before responding to this
16 letter?

17 A. I don't know if it was before or not. I don't
18 know, certainly -- I didn't respond to the letter, I know
19 that Mr. Scott had communications with communications with
20 Seyfarth Shaw, I was not involved with them.

21 Q. And the November 2nd letter, that was the date of
22 the complaint the filed, right, Sheppard, Mullin is getting
23 a letter and in fact you while Mr. Scott was reading this
24 letter you were filing the complaint against SMDC to win a
25 race to the courthouse?

26 A. I filed a complaint November 2nd I do remember
27 that.

28 THE COURT: That was addressed to this witness?

1 A. No it was addressed to his partner was Mr. William
2 Scott your partner?

3 A. He was.

4 Q. And that was the same Bill Scott as mentioned in
5 the e-mails, the expert on gaming?

6 A. Yes.

7 Q. Now moving from the lawsuit, did Sheppard, Mullin
8 in fact help the tribal council drain all of the funds from
9 its accounts and pull it into the Sheppard, Mullin trust
10 account?

11 A. I don't know what Sheppard, Mullin did.

12 Q. Okay so let's refresh your recollection. Let's
13 start at '68 eight. Is that an e-mail from Bill Scott
14 copying you, Jim McShane?

15 A. It is.

16 Q. We'll see that, Polanco should contact Andy Roger
17 son, [STHA*] was that Wells Fargo lawyers, Wells Fargo
18 account manager?

19 A. I don't know, Niall could you [TPHAOEUPBD] the
20 right exhibit for the slow down attachment e-mail.

21 Q. Let's go on to Exhibit 69 zero.

22 THE COURT: Well what was this e-mail about.

23 MR. STEIN: We had the wrong number up there. We
24 pulled up the wrong number.

25 THE COURT: So '68 zero is stricken, okay.

26 MR. STEIN: Very good it can be stricken.

27 THE CLERK: 690 is being the new exhibit.

28 THE COURT: I think that's the one they want I

1 don't know if they've decided yet.

2 MR. FORDYCE: One moment I think it might be --.

3 THE COURT: 690 says Polanco letter to as well as
4 well directing transfer of all funds to Sheppard, Mullin.

5 MR. FORDYCE: Try '69 two.

6 MR. STEIN: Let's look at this letter while we
7 have it.

8 Q. And was it your understanding that the bulk of the
9 funds were kept at Wells Fargo institutional services?

10 A. I don't recall.

11 Q. And it says Richard Polanco you are hereby
12 directed to transfer the entire amount of the account to
13 the trust account of our counsel Sheppard, Mullin?

14 A. That's what it says.

15 Q. And is it your understanding that approximately
16 \$800,000 was transferred to your trust account on or about
17 November 3?

18 A. No.

19 Q. And is November 3 in fact one day after you filed
20 the complaint?

21 A. November 3rd is one day after November 2nd which
22 we've indicated we agreed was the date the complaint was
23 filed.

24 Q. And is this e-mail from your partner Bill Scott to
25 you?

26 A. It's cc today me.

27 THE COURT: What exhibit are we on.

28 MS. IBARRA: Yes.

1 MR. FORDYCE: This is 702.

2 MR. STEIN: 702.

3 MS. IBARRA: Is this new.

4 MR. STEIN: No 702.

5 MR. FORDYCE: It's not new but I don't believe
6 it's been identified.

7 MR. STEIN: Let's go to 692 first because again I
8 think we were looking for one that was kind of so if you
9 can look find the 2567.

10 THE CLERK: So we're not in 702 anymore.

11 MS. IBARRA: So is that stricken.

12 THE COURT: Yeah 702 is stricken, 688 is stricken,
13 690 Polanco letter, I don't know if Sheppard, Mullin was a
14 recipient or we're just kind of went through that real
15 quickly.

16 MS. IBARRA: He didn't identify.

17 THE COURT: So let's go back to 690 because it's
18 not clear to me --.

19 MR. STEIN: This is probably the first one I
20 should have brought up and then we will return to 690 would
21 you like to return to 690 now.

22 MS. IBARRA: Is 690 [STR*EUP] though it's unclear.

23 MR. STEIN: Well once again it would clarify 690
24 this is the first one I would have brought up it's my
25 mistake.

26 MS. IBARRA: What is the number counsel.

27 MR. STEIN: It's '69 three.

28 THE CLERK: What exhibit number is it.

1 MR. STEIN: 36 [*F] '69 three.

2 THE CLERK: And this is a new exhibit.

3 MR. STEIN: Yes.

4 THE COURT: And is this -- okay.

5 MR. STEIN: And is this the grant of the security
6 interest from Virginia Carmelo and Richard Polanco to
7 Sheppard, Mullin for -- can you read that sentence that
8 paragraph first?

9 A. It says this letter suspects the engagement letter
10 which we have previously delivered to you. We anticipate
11 that you will be receiving approximately \$750,000 from
12 Wells Fargo institutional services, LLC, to your client
13 trust account. From these amounts, you are instructed to
14 transfer \$300,000 a retainer account for the tribe. We
15 hereby grants to you a security interest in the \$300,000
16 amount so transferred, to secure our obligations to you for
17 payment of fees and expenses of your firm incurred on
18 behalf of the Gabrielino-Tongva Tribe.

19 Q. Does this refresh your recollection that \$750,000
20 was transferred from GT Tribe's accounts, the same accounts
21 that Mr. Stein was concerned about, to your -- to the
22 Sheppard, Mullin client trust account?

23 A. No, it does not.

24 Q. It doesn't refresh your recollection that that
25 occurred?

26 A. No I've never seen this before.

27 Q. And from these amounts you are instruct today
28 transfer 300,000 to a retainer account for the tribe.

1 MS. IBARRA: Objection he said he'd never seen it
2 before.

3 THE COURT: Sustained.

4 Q. BY MR. STEIN: Once again I'd like to refresh his
5 recollection with a second sentence.

6 THE COURT: Well he doesn't.

7 MS. IBARRA: He's never seen it before?

8 A. I've never seen it before, it doesn't refresh my
9 recollection in any sense.

10 THE COURT: All right so '69 three is stricken,
11 you can use it some other way.

12 MR. STEIN: [#69S] two.

13 THE COURT: With some other witness.

14 MR. STEIN: '69 two please.

15 THE COURT: So 690 is out too, so 690 is out, '69
16 three is out, 702 I think you withdrew.

17 MS. IBARRA: So we don't have any in evidence
18 right now that [RAOUF] used.

19 MR. STEIN: Okay.

20 MR. FORDYCE: 690 Your Honor did --.

21 THE COURT: Well that was dependent on '69 three.

22 MR. STEIN: Yes that he dependent that's right.

23 Q. So then on Friday, November 3 were you C . Add
24 Jim McShane on a letter from your barn Bill Scott?

25 A. According to this exhibit, yes.

26 THE COURT: Which exhibit is this.

27 MR. STEIN: This is Exhibit 69 two.

28 THE COURT: Thank you.

1 MR. STEIN: Could it it be read it in its
2 entirety?

3 A. This will confirm our discussion just now to the
4 effect that Wells Fargo insurance [STAOUPBGS] Al services
5 LLC has request [THAD] we close our account were them.
6 While I have not yet confirmed receipt of their wire, our
7 understanding is that the money formerly contained in that
8 account, approximately seven \$25,000 has been transferred
9 to [SHEP] [PHULZ] client trust account. The tribe has also
10 agreed to take a portion of that.

11 THE COURT: Take?

12 A. Take a position.

13 MR. STEIN: A portion?

14 A. A portion of that money and make it a retainer for
15 [SHEP] [TPULZ] work in connection with litigation filed by
16 us against Jonathan Stein and related entities today. Our
17 trust account was a convenient [TPHRAEUS] to mark the money
18 until the tribe determined where it will establish new
19 investment banking arrangements. We will let you know when
20 and if the monies are transferred to another institution.
21 As we discussed earlier, the tribe intends for the location
22 of the funds to be absolutely transparent to Libra
23 Securities and the investors under the development funding
24 agreement. Please let me foe in you have any questions,
25 either now or from time to time hereafter. Please give
26 Sammy Lai a bit of the broader report which I gave to you
27 orally on this topic. Regards, WMS, who is Bill Scott.

28 Q. Now had you stated before you knew nothing about

1 seven \$25,000 transferred into the Sheppard, Mullin trust
2 account, you knew nothing about a \$300,000 retainer, why
3 did you know nothing if this e-mail was copied to you.

4 MS. IBARRA: O misstates his testimony?

5 A. I said I didn't recall, and I still don't.

6 MR. STEIN: So it's not that you knew nothing,
7 it's just that you don't recall today?

8 A. I don't recall having any knowledge of what was
9 going on with the banking account, I know Mr. Scott was
10 handling what was going on.

11 Q. Even though this was the subject of the litigation
12 for years with Sheppard, Mullin and Mr. Stein, you had --
13 you have no recollection of this whatsoever?

14 A. Correct.

15 Q. Then I'd like '69 four, is that you Jim McShane on
16 this e-mail [-FPLTS] my name is on there yes.

17 Q. Could you please read this.

18 MS. IBARRA: '69 four.

19 THE COURT: Yes.

20 MR. STEIN: This is actually the same e-mail for
21 forgive me for repeating.

22 THE COURT: So '69 four is withdrawn.

23 MS. IBARRA: Withdrawn.

24 MR. STEIN: Yeah right because it's the same as
25 the previous one. Mr. Stein I think we're going to have to
26 close shortly so Five more minutes okay.

27 MR. STEIN: Absolutely correct Your Honor.

28 THE COURT: We have our experts waiting.

1 MR. STEIN: Uh-huh very good.

2 Q. BY MR. STEIN: Do you know just one last line of
3 questioning should be a short one, when you filed the
4 lawsuit on November 2nd, did you check if GT Tribe was in
5 good standing?

6 A. I'm not sure what you mean by good standing, you
7 had told me they were an unincorporated association. I'm
8 not sure what good standing means in connection with an
9 unincorporated association.

10 Q. Well what did you see good standing with respect
11 to one of your corporate clients Mr. McShane?

12 A. Usually that means registration or being in good
13 standing with the department of corporations of the State
14 of California.

15 Q. And if you're not in good standing you can't
16 maintain a lawsuit?

17 A. If you're a corporation that's true but as for
18 unincorporated associations I don't think that's true.

19 Q. But you didn't check whether GT Tribe was in good
20 standing?

21 A. As I told you they were an unincorporated
22 association, there was nothing in check.

23 THE COURT: When you have said check I guess I'm
24 trying to figure out collect where or --.

25 MR. STEIN: Yeah to see.

26 THE COURT: Check where.

27 MR. STEIN: To see.

28 Q. Did you check anywhere?

1 A. I don't think there's anything to check.

2 Q. Nothing to check -- then nothing to check would be
3 accurate?

4 A. I think that's correct.

5 Q. Check to see if they can sue, would that be an
6 accurate statement?

7 A. No. An unincorporated association can sue.

8 Q. Without being in good standing?

9 A. There's no good standing requirement.

10 Q. No further questions thank you.

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