

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," "A"),  
7 TRANSPOSED WORDS, DOUBLE WORDS, CONTEXTUAL HEARING MISTAKES,  
8 HEARING MISTAKES OF SOUND-ALIKE WORDS, POSSIBLE INCORRECT  
9 SPEAKER IDENTIFICATION, AND AT TIMES STENO OUTLINES THAT HAVE  
10 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 10  
2 ROUGH JURY INSTRUCTION, STEIN REBUTTAL, VERDICT  
3 09:32 AM.

4 THE COURT: GABRIELINO-TONGVA TRIBE VERSUS STEIN  
5 BC361307. GOOD MORNING.

6 MS. IBARRA: GOOD MORNING.

7 MR. STEIN: GOOD MORNING YOUR HONOR.

8 MR. FORDYCE: GOOD MORNING.

9 THE COURT: I HOPE YOU I YOU HAD A GOOD LONG  
10 WEEKEND.

11 MS. IBARRA: YES, WE DID THANK YOU.

12 THE COURT: OKAY COUNSEL MAKE YOUR APPEARANCES.

13 MS. IBARRA: DELIA IBARRA ON BEHALF OF PLAINTIFF  
14 GABRIELINO-TONGVA TRIBE.

15 MR. STEIN: JONATHAN STEIN LAW OFFICES OF JONATHAN  
16 STEIN ON BEHALF OF ST. MONICA DEVELOPMENT COMPANY, SMDC AND  
17 THE CRANE GROUP.

18 MR. FORDYCE: NIALL FORDYCE, LAW OFFICES OF NIALL  
19 NIALL FORDYCE ON BEHALF OF STEIN DEFENDANTS.

20 THE COURT: OKAY THANK YOU. IT WAS BROUGHT TO MY  
21 ATTENTION FRIDAY THAT COUNSEL FOR MR. STEIN MAY HAVE WANTED  
22 TO MAKE HIS CLOSING -- HIS REBUTTAL AND I HAD CUT THAT OFF  
23 PREMATURELY SO I WANTED TO MAKE SURE IF YOU WANTED TO DO  
24 THAT, YOU WOULD HAVE AN OPPORTUNITY TO DO THAT THIS MORNING,  
25 IF YOU DON'T, YOU DON'T HAVE TO BUT I THOUGHT MR. STEIN WAS  
26 DOING IT ALL BUT --.

27 MR. FORDYCE: YOUR HONOR IN FACT WE'RE GOING TO SEED  
28 THE LAST 15 MINUTES TO MR. STEIN, I'M WILLING TO DO THAT, IF

1 THAT'S ALL RIGHT WITH THE COURT.

2 THE COURT: THAT'S FINE.

3 MR. FORDYCE: GREAT THANK YOU.

4 THE COURT: IF YOU WANT TO GIVE 15 MINUTES WITH MR.  
5 STEIN, AND MR. STEIN I GUESS WILL ARGUE ON HIS OWN BEHALF.

6 MR. FORDYCE: THANK YOU YOUR HONOR.

7 THE COURT: SO 15 MINUTES, YES.

8 MR. STEIN: AND YOUR HONOR WE -- OVER THE LONG  
9 WEEKEND, WE HAD A CHANCE TO FLESH OUT AN ARGUMENT THAT WE  
10 RAISED EARLIER THAT THERE SEEMS TO HAVE BEEN BEEN A SIMPLE  
11 TRANSLATIONAL ERROR THAT WE HAVE IN THE JURY INSTRUCTIONS.

12 THE COURT: WHERE IS THAT.

13 MR. STEIN: AND I'D LIKE TO FIRST -- IT'S IN THE  
14 INSTRUCTION NUMBER 2 AND IT'S VERY EASY TO FIX, VERY HE'S OH  
15 TO FIX. SO I'D LIKE TO POINT OUT SOMETHING, SO I'M GOING TO  
16 MAKE IT A LITTLE BIT LONGER EXPLANATION JUST BECAUSE IT'S ONE  
17 OF THESE THINGS THAT ONCE THE LIGHT BULB GOES ON YOU GO OH  
18 THERE'S A PROBLEM HERE, SO WE SHOWED THIS TO MS. IBARRA ABOUT  
19 A HALF AN HOUR AGO IF YOU GO TO PAGE 3 YOU'LL SEE A PINK  
20 HIGHLIGHT.

21 THE COURT: OKAY --.

22 MR. STEIN: WELL ACTUALLY I GAVE YOU HAVE MY COPY,  
23 MAYBE I WILL -- YOU CAN HEAD AND HAVE THAT, BUT I GAVE YOU  
24 HAVE MY COPY THAT'S WHY IT HAS A LITTLE BIT MORE HIGHLIGHTING  
25 IN IT. THE COURT SAYS LISTEN THERE'S A CONSTITUTIONAL  
26 MINIMUM TO SHOW STANDING AND IF YOU LOOK AT HERE, THE SUPREME  
27 COURT SUMMARIZES THE THREE WELL ESTABLISHED ELEMENTS THAT ARE  
28 REQUIRED IN ORDER FOR PARTY TO HAVE STANDING, IN OTHER WORDS

1 THIS IS WHAT THE PLAINTIFF HAS TO HAVE, THEY HAVE TO HAVE ALL  
2 THREE THINGS. NOW WHEN YOU TRANSLATE THAT, TRANSLATIONAL  
3 ERROR, WHEN YOU TRANSLATE THAT TO THE AFFIRMATIVE DEFENSE, WE  
4 HAVE ONLY HAVE TO KNOCKOUT ONE LEG OF THE STOOL, WE DON'T  
5 HAVE TO KNOCKOUT ALL THREE. SO HERE PLAINTIFFS NEED THREE  
6 LEGS TORE THEIR STOOL TO STAND AND WE AS DEFENDANTS  
7 AFFIRMATIVE DEFENSE WE ONLY HAVE TO KNOCKOUT 16 THEM. IF YOU  
8 GO TO THE JURY INSTRUCTION THAT WAS GIVEN, IT SAYS WE'VE GOT  
9 TO KNOCKOUT ALL THREE AND SO IT'S VERY EASY TO FIX, IF WE CAN  
10 EXPLAIN IT TO THE JURY, IF WE CAN AGREE ON A FIX FIRST OF ALL  
11 AND THEN EXPLAIN IT TO THE JURY, I WILL THEN BE ABLE TO GIVE  
12 ME REBUTTAL.

13 MS. IBARRA: WELL I MEAN IT LOOKS LIKE THAT MIGHT BE  
14 WHAT IT SAYS BUT THIS -- THIS ISN'T CLEAR SO I'M JUST  
15 WONDERING WHY YOU DIDN'T BRING THE CASE --.

16 MR. STEIN: WE DID BRING IT UP.

17 MS. IBARRA: NO I'M WONDERING WHY YOU DIDN'T BRING  
18 THE CASE LAW THAT SAYS AND AND AND. BECAUSE THE QUESTION WAS  
19 WAS IT AN AND/OR AN OR BASICALLY IS THE INSTRUCTION.

20 THE COURT: OKAY I THINK I REMEMBER, YEAH.

21 MS. IBARRA: SO THAT'S BASICALLY THE ISSUE THAT  
22 THEY'RE BRINGING UP AND YOU DISCUSSED THIS BEFORE BUT THIS IS  
23 THE SAME CASE LAW THAT'S UNCLEAR BEFORE SO I'M WONDERING IF  
24 THERE WAS BETTER CASE LAW THAT WOULD MAKE IT -- I'M NOT GOING  
25 TO ARGUE WITH IT IF THAT'S NOT WHAT THE STANDARD IS I  
26 JUST --.

27 THE COURT: CAN YOU GIVE ME MY JURY INSTRUCTION, THE  
28 ONE THAT WE GAVE.

1 MS. IBARRA: THIS JUST ISN'T -- DO YOU KNOW WHAT I  
2 MEAN, IT JUST -- IT STATES THREE ELEMENTS AND IT DOESN'T SAY  
3 ANYWHERE ON HERE YOU KNOW ALL THREE MUST BE -- MUST BE FOUND  
4 PRESENT.

5 THE COURT: WELL I THINK IF THEY DO ALL THREE MUST  
6 BE PRESENT IN ORDER TO HAVE STANDING.

7 MR. STEIN: AND IT SAYS THAT. AND IT SAYS THAT.

8 MR. FORDYCE: YOUR HONOR I THINK SOME OF THE  
9 CONFUSION HERE IS FROM A PLAINTIFFS STANDPOINT IT'S A  
10 CONJUNCTIVE REQUIREMENT IT'S THERE MUST BE AN INJURY.

11 THE COURT: RIGHT.

12 MR. FORDYCE: AND THIS MUST BE A CAUSAL LINK AND  
13 THERE MUST BE REDRESS ABILITY AND AS A LOGICAL CONCLUSION I  
14 HAVE IT WAS IF IT'S CONJUNCTIVE ON THE PLAINTIFFS PART IT  
15 JUST BE DISJUNCTIVE ON THE DEFENDANTS PART.

16 THE COURT: OKAY I THINK I'M FOLLOWING YOU, JUST LET  
17 ME FIND THE INSTRUCTION HERE. THE CAPACITY -- I THINK I  
18 FOUND IT. I THINK I UNDERSTAND WHAT DEFENSE IS SAYING IS  
19 THAT PLAINTIFF MUST PROVE ALL OF THAT BUT DEFENDANT WOULD  
20 ONLY HAVE TO SHOW THAT --.

21 MS. IBARRA: OF THEM IS LOOKING.

22 THE COURT: YOU CAN'T -- RIGHT, YOU CAN'T MEET 16  
23 THOSE, SO I THINK IT PROBABLY SHOULD BE, SO WHAT WE CAN DO IS  
24 CHANGE IT AND THEN JUST INSTRUCT THE JURY AGAIN AND THEN YOU  
25 CAN DO YOUR 15 MINUTES.

26 MR. STEIN: YEAH AND IF WE CAN GET A NEW PRINTOUT  
27 WE'LL PDF IT AND WE'LL PUT IT UP ON THE BOARD BECAUSE I WANT  
28 TO ARGUE TO THE NEW INSTRUCTION.

1 THE COURT: WELL I CAN'T PRINT IT OUT RIGHT NOW, I'M  
2 GOING TO --.

3 MR. STEIN: WELL IF YOU SIMPLY, IF WE HAVE A COPY OF  
4 THAT TO JUST RUN THROUGH THE SCANNER.

5 THE COURT: WHAT WE CAN DO IS BLACKOUT THE AND,  
6 UNLESS YOU -- I HAVE PROBABLY COULD DO IT RIGHT NOW.

7 MR. STEIN: YEAH THAT'S WHAT I'M THINKING IT'S VERY  
8 QUICK.

9 THE COURT: UNLESS HUH ANYTHING ELSE YOU NEED TO  
10 ADDRESS, I THINK WE HAVE TIME.

11 MR. STEIN: AND YOUR HONOR, IF I COULD JUST MAKE A  
12 SUGGESTION AS TO THE LANGUAGE, OBVIOUSLY THE COURT HAS DONE  
13 THIS A ZILLION TIMES FOR THAN I HAVE BUT DEFENDANTS MUST  
14 PROVE BY PREPONDERANCE OF THE EVIDENCE THAT ANY ONE OF THE  
15 FOLLOWING, INSTEAD OF THAT, WE MUST PROVE ANY ONE OF THE  
16 FOLLOWING BECAUSE IT SAYS THAT PLAINTIFFS DID NOT SUFFER AN  
17 INJURY.

18 THE COURT: I'M JUST GOING TO GO WITH THE OR, MUST  
19 PROVE ABOUT THE PREPONDERANCE OF THE EVIDENCE THAT PLAINTIFFS  
20 DID NOT SUFFER AN JUDGE IN FACTOR THERE WAS NO CAUSAL  
21 CONNECTION OR IT WAS UNLIKELY.

22 MS. IBARRA: YEAH THEY'RE CLOSELY RELATED CONCEPTS  
23 TO --.

24 THE COURT: I THINK THAT'S THE BETTER WAY VERY GOOD,  
25 AND ONCE AGAIN THESE MECHANICS THE COURT IS FAR MORE SKILLED.

26 THE COURT: SO ANYTHING ELSE AND I'LL GO BACK  
27 AND --.

28 MR. STEIN: NO.

1 THE COURT: SO I WILL TELL THE JURY THAT WAS MY  
2 ERROR AND SO THAT WILL GIVE YOU THE 15 MINUTES AND THEN  
3 THEY'LL GO BACK THAT WAY THEY WON'T THINK THAT IT'S STRANGE  
4 THAT WE'RE DOING THIS.

5 MR. STEIN: AND IF THE COURT CAN EXPLAIN THE  
6 DIFFERENCE THAT AND MEANS YOU HAVE TO PROVE ALL THREE AND/OR  
7 MEANS YOU ONLY HAVE TO PROVE ONE.

8 THE COURT: I'M JUST GOING TO READ THE INSTRUCTION,  
9 IF THEY HAVE A QUESTION ABOUT IT THEN -- I CAN POINT OUT THE  
10 DIFFERENCE BETWEEN IT IF THE WANT ME TO DO THAT.

11 MR. STEIN: YES.

12 MS. IBARRA: IT'S AN EASY CONCEPT.

13 THE COURT: YES. THANK YOU I'LL BE BACK AND I'LL  
14 GOING TO REPRINT THIS.

15 (BREAK TAKEN.) 09:39 AM TO 09:47 AM.

16 THE COURT: SO I -- DID YOU GET YOUR COPY.

17 MR. STEIN: YES THANK YOU.

18 THE COURT: ANYTHING ELSE YOU WANT TO TALK TO ME  
19 ABOUT, I'M GOING TO GO BACK IN CHAMBERS AND WAIT FOR THE  
20 JURY.

21 MR. STEIN: UH-HUH.

22 THE COURT: NO.

23 MS. IBARRA: NO THANK YOU.

24 THE COURT: OKAY.

25 (BREAK TAKEN.) 09:47 AM TO 10:04 AM.

26 THE COURT: THANK YOU BRING THEM IN.

27 (WHEREUPON THE JURY ENTERS THE COURTROOM.).

28 THE COURT: GABRIELINO-TONGVA TRIBE VERSUS JONATHAN

1 STEIN BC361307, GOOD MORNING EVERYONE, WELCOME BACK, I HOPE  
2 YOU HAD A GOOD WEEKEND. COULD YOU PLEASE MAKE YOUR  
3 APPEARANCES.

4 MS. IBARRA: DELIA IBARRA ON BEHALF OF PLAINTIFF  
5 GABRIELINO-TONGVA TRIBE.

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

8 MR. FORDYCE: GOOD MORNING NIALL FORDYCE ON BEHALF  
9 OF STEIN DEFENDANTS.

10 THE COURT: OKAY THANK YOU. I NEED YOU TO INDULGE  
11 ME FOR ABOUT 15 MINUTES, I'M GOING TO READ A VERY ADVISED  
12 JURY INSTRUCTION AND THEN I'M GOING TO GIVE MR. STEIN 15  
13 MINUTES AND I'LL READ THE INSTRUCTION AND I'LL TELL YOU THE  
14 DEFENSE. EVERY ACTION MUST BE PROSECUTED IN THE [TPHA\*] NAME  
15 OF THE REAL PARTY IN [STR] EXCEPT AS OTHERWISE PROVIDED BY  
16 STATUTE, DEFENDANT HAVE AFFIRMATIVE DEFENSE OF LACK OF  
17 STANDING, DEFENDANT IN EYE [PH-PD] EIFFE 15 IT PLAINTIFF  
18 FINANCIAL EYE IN FACTOR THERE WAS NO CAUSAL CONNECTION  
19 BETWEEN PLAINTIFFS INJURY AND DEFENDANTS CONDUCTOR THREE, IT  
20 IS UNLIKELY THAT PLAINTIFFS INJURY CAN BE REDRESSED BY A  
21 FAVORABLE COURT DECISION. THE DEFENSE IS THE THREE ELEMENTS  
22 THAT I LISTED, THE OLD INSTRUCTION SAID -- HAD AND IN BETWEEN  
23 EACH ELEMENT, IN OTHER WORDS FIRST ELEMENT SAYS PLAINTIFF DID  
24 NOT SUFFER AN INJURY IN FACT AND BUT THAT WAS WRONG, IT  
25 SHOULD BE OR, OKAY? SO EACH ELEMENT, DEFENSE ONLY NEEDS TO  
26 PROVE ONE OF THE ELEMENTS, OKAY, NOT ALL THREE. SO THAT'S  
27 THE DIFFERENCE, I'M GOING TO GIVE MR. STEIN 15 MINUTES TO  
28 ADDRESS YOU.



1 MR. STEIN: OKAY SO I'M GOING TO FOCUS AGAIN ON THE  
2 TWO INSTRUCTIONS, THAT SMALL CHANGE MAKES IT EASIER, IN OTHER  
3 WORDS IF YOU THOUGHT YOU MIGHT SAY NO TO LACK OF STANDING,  
4 THE SECOND QUESTION, IF YOU THOUGHT NO LACK OF STANDING, IT'S  
5 TIME TO GO HOME, THAT MAKES IT EASIER TO FIND LACK OF  
6 STANDING. BUT WE'RE GOING TO START WITH QUESTION ONE AND TWO  
7 AND USE THE 15 MINUTES JUST TO REFRESH YOUR RECOLLECTION,  
8 REMEMBER SOME OF YOU PEOPLE REMEMBER FRIDAY AND THE WHOLE  
9 JURY LIKE IT WAS YESTERDAY, OTHERS YOU REALLY GOT WAY FOR  
10 THREE DAYS AND IT'S THOSE PEOPLE THAT I'D REALLY LIKE TO MAKE  
11 SURE THAT WE'RE REFRESHING THE RECOLLECTION. SO FIRST OF ALL  
12 VERY QUICKLY THE ONE MINUTE SURVEY, 2001 TO 2006, THE SMDC  
13 AGREEMENT WAS BETWEEN SMDC GT TRIBE, FOR SIX YEARS, 2001, TO  
14 2006, OCTOBER 2006, GT TRIBE TERMINATES THE AGREEMENT, THAT  
15 MEN'S THAT SMDC NEVER WORKED FOR THE DUNLAP FACTION, IF YOU  
16 THINK THE DUNLAP FACTION IS A SEPARATE ORGANIZATION, A  
17 SEPARATE VOLUNTARY ORGANIZATION OR A TRIBAL NATION, DIFFERENT  
18 FROM GT TRIBE, THEN SMDC NEVER WORKED FOR THEM BECAUSE ON --  
19 ON OCTOBER 3, THERE WAS A TERMINATION. NOVEMBER 2, ONE MONTH  
20 LATER, NOVEMBER 2, 2006, GT TRIBE SUE SMDC BEFORE SMDC CAN  
21 SUE GT TRIBE SMDC SAYING LET'S SETTLE, LET'S MEDIATE, GT  
22 TRIBE SAYS NO WE WANT TO BE THE BEHALF WE WANT TO KNOW SHOW  
23 HOW BAD YOU ARE EVEN THOUGH YOU SAY WE OWE HAD YOU MILLIONS  
24 OF DOLLARS. NOVEMBER 18TH AND 19TH THIS IS AFTER THE LAWSUIT  
25 WAS FILED, THERE IS A SPLIT, DID THE SPLIT HAVE TO HAPPEN?  
26 NO. DID THE SPLIT BECOME TERM PERMANENT IN ONE DAY? NO BUT  
27 IT BAKERSFIELD BECAME PERMANENT BY SPRING, AGAIN THE SPLIT  
28 HAPPENED AFTER THE LAWSUIT IS FILED SO IF GT TRIBE SPLITS IN

1 TWO WHO CONTROLS THE LAWSUIT? WELL IN SPRING OF 2007 THE  
2 CANDELARIA FACTION SAYS HEY WE'RE GT TRIBE, WE HAD NEW SPRING  
3 ELECTIONS WE TAKE CONTROL FORMALLY OF GT TRIBE, WE TAKE  
4 FORMAL CONTROL IN SPRING OF 2007. IN THE MEANWHILE DUNLAP  
5 FACTION, THEY HAVE A BIG CONSTITUTIONAL CONVENTION, THEY PASS  
6 A BRAND NEW CONSTITUTION, TOTALLY DIFFERENT FROM THE OLD  
7 CONSTITUTION, CANDELARIA FACTION NOT ONLY LET'S IN ALL THE  
8 MEMBERS, THEY HAVE THE OLD CONSTITUTION, THEN BY THE FALL  
9 2007 DUNLAP FACTION HAS AN ELECTION FOR THEIR PEO'TSKOME,  
10 THEY THEY'VE NOW EXPANDED TO NINE MEMBERS, THEY HAVE TO ELECT  
11 NEW MEMBERS AND IN THE MEANWHILE, OCTOBER 2007, CANDELARIA  
12 FACTION GOES TO THE COURT AND SAYS LISTEN, WE WANT TO SETTLE  
13 THE LAWSUIT, THE COURT SAYS FINE, YOU'RE OUT OF THE LAWSUIT  
14 BUT DUNLAP FACTION HAS TO GET A TRIAL BECAUSE THEY'RE  
15 CLAIMING THEY ARE THE RIGHT REAL PARTY IN INTEREST, EIGHT  
16 YEARS LATER, HERE WE ARE AT THAT SAME TRIAL THAT FOR SOME  
17 REASON DIDN'T OCCUR RIGHT AFTER THE SETTLEMENT, EIGHT YEARS  
18 LATER HERE WE ARE. AND NUMBER ONE IS THE VERDICT FORM,  
19 NUMBER ONE THAT WE'RE GOING TO LOOK AT FIRST. NIAL. AND  
20 WHAT WE DID IS WE HAD IT ON THE PROJECTOR BEFORE, REMEMBER IT  
21 HAD A HANDWRITTEN X BEFORE, THIS IS A LITTLE FASTER SINCE I  
22 ONLY HAVE 15 MINUTES, DOES PLAINTIFF GT TRIBE, RIGHT THEY'RE  
23 MASQUERADING AT GT TRIBE, HIGH IT'S HALLOWEEN, I'M FIVE FOOT  
24 10, BUT I'M SHAQUILLE O'NEAL NICE CONSUME, NICE MASQUERADE,  
25 DOES PLAINTIFF ALSO KNOWN AS THE DUNLAP FACTION HAVE THE  
26 CAPACITY TO SUE, REMEMBER THAT'S ARE YOU AN UNINCORPORATED  
27 ASSOCIATION. LET'S LOOK AT THE JURY INSTRUCTION, TO BE ABLE  
28 TO SEE HUH TO HAVE A STATUTE THAT SAYS YOU CAN SUE AND THIS

1 ONE SAYS YOU MUST BE A PARTNERSHIP OR OTHER UNINCORPORATED  
2 ASSOCIATION TO SUE. NOW, WE'RE GOING TO GO -- SHOW THE TABLE  
3 NIALL. SO WHAT I DID WAS TO JUST SUMMARIZE THING I MADE A  
4 LITTLE TABLE AND LET'S JUST TAKE A SECOND.

5 MS. IBARRA: OBJECTION THIS --.

6 THE COURT: OKAY TAKE IT DOWN.

7 MS. IBARRA: WE HAVEN'T SEEN THIS.

8 THE COURT: YEAH YOU NEED TO SHARE WHAT YOU'RE USING  
9 IN CLOSING WITH EACH OTHER BEFORE YOU USE IT.

10 MR. STEIN: I'M SORRY I THOUGHT WE DID.

11 MS. IBARRA: NO.

12 MR. STEIN: SO WOULD YOU LIKE TO SEE IT NOW.

13 MS. IBARRA: IT'S TOO LATE.

14 THE COURT: WHY DON'T YOU JUST ARGUE IT YOU DON'T  
15 HAVE TO SHOW IT TO THE JURY THIS IS A.

16 MR. STEIN: ONCE AGAIN, I WOULD LIKE TO JURY TO TAKE  
17 A LOOK AT THAT. IT'S JUST A SERIES OF YES AND NO AND  
18 WITNESSES.

19 MS. IBARRA: I'M OBJECTING TO IT.

20 THE COURT: SHE'S OBJECT TO IT.

21 MR. STEIN: VERY GOOD.

22 THE COURT: YOU CAN USE IT YOURSELF.

23 MR. STEIN: VERY GOOD.

24 MR. STEIN: YOU MAY WANT TO BRING DOWN EACH OF THESE  
25 POINTS NOW IS THE DUNLAP FACTION AN UNINCORPORATED  
26 ASSOCIATION, YES IT'S AN UNINCORPORATED ASSOCIATION NO IT'S A  
27 TRIBAL NATION. VIRGINIA CARMELO SHE WAS ASKED THAT EXACT  
28 QUESTION, SHE SAID NO WE'RE NOT AN UNINCORPORATED

1 ASSOCIATION, WE'RE A TRIBAL NATION. SANDONNE GOAD RIGHT HERE  
2 WAS ASKED THAT SAME QUESTION, ARE YOU AN UNINCORPORATED  
3 ASSOCIATION, NO ARE YOU A TRIBAL NATION, YES, AND THE TRIBAL  
4 NATION WAS THE CONSISTENT WITH THE CONSTITUTION WITH SAID  
5 TRIBAL NATION AND THE COMPLAINT. NIALL CAN YOU PUT UP THE  
6 REDACTED VERSION OF EXHIBIT 5 26. WE [SREPB] TALKED TO SAM  
7 DUNLAP ARE YOU AN UNINCORPORATED ASSOCIATION, NO, ARE YOU A  
8 TRIBAL NATION YES. NOW SAM DUNLAP IF YOU REMEMBER, WHAT SAM  
9 DUNLAP SAID WAS WE HAD A STATEMENT OF AUTHORITY, IT WAS  
10 SIGNED BY LINDA CANDELARIA, OH WE FILED ANOTHER ONE, REMEMBER  
11 KIND OF A DESPERATION MOVE, DID YOU GIVE IT TO YOUR COUNSEL I  
12 ASKED, HE SAID NO, DID YOU KEEP A COPY OF IT, HE SAID HAD HE  
13 DIDN'T HAVE A COPY WITH HIM, HE I SAID DO YOU HAVE A COPY AT  
14 HOME, HE SAID NO I DON'T HAVE THAT EITHER.

15 MS. IBARRA: OBJECTION MISSTATES THE TESTIMONY.

16 THE COURT: THE JURY WILL -- THIS IS ARGUMENT, THE  
17 JURY WILL REMEMBER WHAT THE EVIDENCE IS.

18 MR. STEIN: SO THEN WE -- THEN DELIA IBARRA IN HER  
19 CLOSING SAYS THIS IS OUTRAGEOUS TESTIMONY, WELL THESE WERE  
20 ALL HER WITNESSES, WE ADD RICHARD POLANCO, WE HAVE ASKED HIM  
21 IS IT AN UNINCORPORATED ASSOCIATION HE SAID NO IT'S A GROUP  
22 OF INDIVIDUALS, HE SAID IT'S NOT AN UNINCORPORATED  
23 ASSOCIATION. SO FOUR OUT OF THEIR FOUR WITNESSES SAID  
24 THEY'RE NOT UNINCORPORATED ASSOCIATIONS, DELIA IBARRA SAYS  
25 THIS IS OUTRAGEOUS TESTIMONY, THEY'RE HER OWN WITNESSES.  
26 FINALLY WE'LL GO TO EXHIBIT 5 47 NIALL, AND THAT IS THIS  
27 COMPLAINT SAYS THE TRIBE IS A TRIBAL NATION AND THEN FIVE 47  
28 SHOWS THAT IS ALL CONSISTENT WITH THEIR CONSTITUTION, THAT'S

1 WHY THEY ALL AGREED, THIS IS CONSISTENT WITH THE NEW  
2 CONSTITUTION THAT THEY PASSED AFTER THE TRIBE SPLIT AND THE  
3 DUNLAP FACTION CAME INTO BEING. THAT'S QUESTION NUMBER ONE.  
4 QUESTION NUMBER 2 IS THE VERDICT FORM IS FOR WE NUMBER 2,  
5 DOES THE GT TRIBE -- ONCE AGAIN THIS IS THE MASQUERADE, THE  
6 SHAQUILLE O'NEAL IS FIVE-TEN ON HALLOWEEN DOES PLAINTIFF GT  
7 TRIBE ALSO KNOWN AS THE DIFFERENTIAL DIAGNOSIS IS STANDING.  
8 NOW YOU HEARD THE COURT, LET'S GO TO THE JURY INSTRUCTION FOR  
9 THAT, THE NEW ONE THAT THE COURT SAID, LET'S JUST GO OVER, WE  
10 HAVE THREE [PWAOEUFTS] AT THE APPLE, WE DON'T HAVE TO SHOW  
11 ALL THREE ARE CORRECT, WE DON'T SHOW THAT PLAINTIFF DID NOT  
12 SUFFER AN INJURY IN FACT, GT TRIBE SUFFERED THE INJURY FROM  
13 2001 TWO AND THREE, NOT DUNLAP FACTION, OR IF WE DON'T  
14 SUCCEED IN SHOWING THAT, WE CAN SHOW THERE'S NO CAUSAL  
15 CONNECTION BETWEEN THE DUNLAP FACTION -- BETWEEN THE INJURY  
16 TO GT TRIBE AND DEFENDANTS CONDUCT SHALL THERE ACTUALLY WAS A  
17 CAUSAL CONNECTION AND IT WAS SETTLED OUT, THERE WAS A  
18 SETTLEMENT IN THIS ACTION BY THE CANDELARIA FACTION, THAT  
19 SETTLED EVERYTHING OUT. NUMBER 3 IS IT UNLIKELY THE  
20 PLAINTIFFS INJURY, GT TRIBE, FROM 2001 TO 2006 THAT THEIR  
21 INJURY WOULD BE RE DRESS THE BY GIVING A JUDGMENT TO THEM.  
22 REMEMBER WE TALKED ABOUT 20 DAYS TO NET OUT ONE POINT 59  
23 5,000,000 IN FEES AND 232,000 IN COSTS AND A BOAT LOAD OF  
24 INTEREST VERSUS THEIR PURPORTED INJURIES, LET'S SAY THEY DO  
25 AMAZINGLY WELL AND THEY GET \$5,000 AND IF YOU GIVE IT TO THEM  
26 IT'S GOING TO THE WRONG PEOPLE IT SHOULD GO TO GT TRIBE. SO  
27 I HAVE A SERIES OF QUESTIONS, ONCE AGAIN ONE OF THE THREE, WE  
28 DON'T NEED ALL THREE, WE ONLY NEED ONE OF THE THREE TO BE

1 CORRECT. SO I MADE A SERIES OF QUESTIONS FOR YOU ARE, AND  
2 WE'LL [PHEBGS] THE EXHIBIT EXHIBITS THAT GO WITH EACH  
3 QUESTION. SO FIRST OF ALL, DID YOU HAVE -- DID THAT FACTION  
4 HAVE GOVERNMENT FILINGS WITH THE STATE GOVERNMENT [-RS]  
5 [KA\*FT], YES THEY CONTINUED THE FILINGS MADE BY GT TRIBE WITH  
6 THE FAIR POLICE CAL PRACTICES COMMISSION, EXHIBIT -- THAT WAS  
7 EXHIBIT 50 FIVE, EXHIBIT 107, STATEMENT OF AUTHORITY H YOU  
8 SAW THEY HAD A STATEMENT OF AUTHORITY SIGNED BY LINDA  
9 CANDELARIA, THE DUNLAP FACTION THEY HAD NO STATE FILINGS,  
10 THEY HAD NO STATEMENT OF AUTHORITY THAT THEY PUT IN EVIDENCE,  
11 THERE IS NO EXHIBIT SHOWING THAT. GOVERNMENT FILINGS FOR THE  
12 FEDERAL GOVERNMENT WELL WE SAW THE CANDELARIA FACTION PUT IN,  
13 HAD AN EMPLOYER IDENTIFICATION NUMBER AND THEY FILED TAX  
14 RETURNS, REMEMBER THEY FILE THEM AFTER THE SPLIT BUT THEY  
15 NONETHELESS FILED THEM FOR 2000 THROUGH 2008 AND THEN  
16 CONTINUED THEREAFTER. DUNLAP FACTION HAD NO FEDERAL  
17 GOVERNMENT FILINGS, THEY HAD NO EMPLOYEE IDENTIFICATION  
18 NUMBER, EVEN THOUGH THEY HAD EMPLOYEES, THEY ADMITTED THEY  
19 HAD EMPLOYEES AND THEY HAVE NO FEDERAL RECOGNITION  
20 APPLICATION, 10 YEARS AFTER THEY PUT THIS NEW CONSTITUTION IN  
21 EFFECT, NO FEDERAL RECOGNITION APPLICATION. SECOND QUESTION,  
22 THE MEMBERSHIP, DID THE MAJORITY OF THE 1700 MEMBERS OF GT  
23 TRIBE GO WITH THAT FACTION, CANDELARIA FACTION, YES, THEY  
24 DID, 1500 MEMBERS WENT WITH THEM, WE SAW EXHIBIT 507, THE  
25 LIST OF 1500 MEMBERS, WE SAW EXHIBIT 51 ONE, THE LIST OF 230  
26 TERMINATED MEMBERS THAT DIDN'T WANT TO GO WITH THEM. DUNLAP  
27 FACTION DID THE MAJORITY OF THE 1700 GO WITH THEM, NO, ONLY  
28 230 [#\*] 200 OR 230 WENT WITH THEM AND THERE NEVER SHOWED ANY

1 EVIDENCE, THERE IS NO EXHIBIT THAT YOU WILL SEE THAT SHOWS  
2 WHAT THE THE MEMBERSHIP OF DUNLAP FACTION. THEY HID IT FROM  
3 YOU, THEY DIDN'T WANT TO SHOW WHAT YOU THEIR MEMBERSHIP WAS,  
4 IN FACTS IT WAS JUST THE 230 MEMBERS THAT HAD GREEN CARDS,  
5 YOU ALSO HEARD SANDONNE GOAD SAY THAT THEY HAVE CERTIFICATES,  
6 THEY HAVE 271 CERTIFICATES OF CITIZENSHIP BUT THAT WASN'T  
7 UNTIL 2012, THAT WAS SIX YEARS LATER, TO MAKE THEIR  
8 CERTIFICATES CITIZENSHIP, NEXT QUESTION, DID THE SAME MEMBER  
9 AFTER 2006 SPLIT, WAS HE ALLOWED TO SAY? YOU HEARD JERRY  
10 MALDONADO SAY HE DIDN'T WANT TO JOIN ANY FACTION, HE JUST  
11 WANTED TO STAY WITH GT TRIBE AND IN FACT ALL THE MEMBERS THAT  
12 WANTED TO STAY, STAYED WITH CANDELARIA FACTION UNLESS THEY  
13 PUT IN A BLUE CARD SAYING GIVE ME MY RECORDS BACK. DUNLAP  
14 FACTION, DID THE SAME MEMBER GET TO GO WITH DUNLAP FACTION IF  
15 HE WANTED TO, WELL THE ANSWER IS NO. YOU HAD TO BE ADMITTED  
16 THROUGH A CITIZENSHIP APPLICATION. IF YOU DIDN'T HAVE YOUR  
17 BIA DOCUMENTATION PERFECT OR IF YOU COULDN'T SHOW FIVE  
18 GENERATIONS, THAT'S EXHIBIT 5 39, YOU HAVE COOPERATE GET INTO  
19 DUNLAP FACTION AND YOU SAW THAT SIX YEARS LATER THEY STILL  
20 ONLY HAD 271 CITIZENS. NEXT QUESTION, WELL DID THE FACTION  
21 MAKE ANY MEMBERSHIP TABLES TO SHOW HOW IT COMPARED TOOT  
22 GROUPS TO GIVE ALL THE MEMBERS A DISCLOSURE, THIS IS HOW MANY  
23 MEMBERS WE HAVE, THIS IS HOW MANY MEMBERS WE THINK THE OTHER  
24 GROUPS HAVE. CANDELARIA FACTION HAD MEMBERSHIP TABLES,  
25 EXHIBIT 5 17 FOR 2007 AND 2008, DUNLAP FACTION, NO MEMBERSHIP  
26 TABLES THERE'S NOTHING IN EVIDENCE, THEY DIDN'T WANT TO SHOW  
27 WHO WAS MEMBERS WITH THEM AND WHO WERE MEMBERS ELSEWHERE.  
28 NEXT QUESTION, WHO DID THE LOS ANGELES COUNTY SHERIFF'S

1 RETURN MEMBERSHIP RECORDS TO. REMEMBER EXHIBITS 785, THE  
2 LEVEE ON SANTA MONICA, EXHIBIT 786, THE LEVEE FOR THE  
3 TERMINAL STREET ADDRESS DOWNTOWN? THE SHERIFFS TOOK THE  
4 RECORDS FROM THE DUNLAP FACTION AND GAVE THEM TO SMDC WHO  
5 TURNED THEM OVER TO THE CANDELARIA FACTION. WHO DID THE LOS  
6 ANGELES COUNTY SHERIFF RETURN THE MEMBERSHIP RECORDS TO.  
7 NEXT QUESTION, FAIR PROCEDURES FOR THE MEMBERS LEAVING THE  
8 FACTION, IN OTHER WORDS IF YOU WERE NOT GOING TO TAKE ALL OF  
9 GT TRIBE DID YOU GIVE FAIR PROCEDURE TO THE PEOPLE THAT YOU  
10 HAVE WEREN'T TAKING? WELL IN THE CASE OF THE CANDELARIA  
11 FACTION, EVERYBODY FROM GT TRIBE WAS WELCOME TO STAY, PEOPLE  
12 DIDN'T SEND IN BLUE CARD, DID THEY GET FAIR PROCEDURE, THE  
13 ANSWER IS EXHIBIT 509, THEY HAD A RETURN OF THEIR MEMBERSHIP  
14 RECORDS CERTIFIED, YOU SAW BARBARA GARCIA, I CHECKED, I  
15 DOUBLE CHECKS, I SPENT A THOUSAND HOURS ON THIS ON 230  
16 MEMBERS, THERE WAS A MEMBER TERMINATION LETTER AND THEN IF  
17 YOU SAID OH MY GOSH I'M BEING TERMINATED I DON'T WANT TO BE,  
18 YOU COULD CALL BARBARA GARCIA AND SHE WOVE REINSTATE YOU, AND  
19 SHE SAID SHE [R\*E] BEHIND STATED ABOUT 40 TO 50 PEOPLE AND  
20 THE 230 FELL TO 18 SIX, THAT'S EXHIBIT 5 17. NOW LET'S LOOK  
21 AT THE DUNLAP FACTION, DID THEY HAVE ANY FAIR PROCEDURE FOR  
22 THE MEMBERS OF GT TRIBE THAT DID NOT BECOME CITIZENS, AND THE  
23 ANSWER IS THEY HAD NO PROCEDURE AT ALL, THEY LEFT 1500 PEOPLE  
24 ON THE BEACH, THERE WAS NO PROCEDURE, YOU JUST WERE NOT PART  
25 OF OUR -- OF OUR GROUP ANY MORE AND YOU DIDN'T -- YOU MAY  
26 HAVE DONE NOTHING WRONG BUT YOU DON'T GET A CHANCE TO TALK  
27 ABOUT IT. 230 YESES, A CASINO IF THEY GET IT WOULD BE  
28 [KPHREUT] ONLY 230 WAYS, 1500 PEOPLE LEFT ON THE BEACH, HOW



1     COULD THEY BE GT TRIBE THIS THEY LEFT 1500 OF 1700 MEMBERS ON  
2     THE BEACH. THE NEXT QUESTION I WOULD ASK IS WHO CONTROLLED  
3     GT TRIBE AFTER THE SPRING 2007 ELECTIONS AND NOW WE'RE REALLY  
4     DOWN TO IT RIGHT? THERE'S A LAWSUIT OUT THERE, THERE'S A  
5     VOLUNTARY ORGANIZATION OUST THERE, WHO CONTROLLED IT AFTER  
6     THE SPRING 2007 ELECTIONS, WELL THE LONG TIME TRIBAL  
7     ACCOUNTANT, TALLEY & COMPANY CERTIFICATE 578 CERTIFIED THOSE  
8     ELECTIONS, PUBLISHED ANYTIME LOS ANGELES TIMES AND SAID  
9     LISTEN THESE ARE THE NEW LEADERS DULY ELECTED OF GT TRIBE,  
10    DUNLAP FACTION RAN AWAY, THEY RAN AWAY FROM THE DEBTS, THEY  
11    CREATED A NEW CONSTITUTION, EXHIBIT 54 TWO, THEY HAD THIS  
12    THEIR OWN FALL 2007 ELECTIONS, NO EXHIBIT --.

13           THE COURT: ACTUALLY COUPLE MINUTES, ACTUALLY YOUR  
14    TIMES UP I'LL GIVE YOU A COUPLE MORE MINUTES.

15           MR. STEIN: TWO MORE POINTS. LET ME JUST ASK YOU  
16    THE QUESTION VERY QUICKLY. WAS THE DEPARTURE OF THE DUNLAP  
17    FACTION THE SAME AS THE DEPARTURE OF THE ITEM SALAS FACTION?  
18    YOU REMEMBER THE SALAS FACTION, THEY BEAT UP BERNIE ACUNA?  
19    50 PEOPLE, WAS THIS THE SAME TYPE OF DEPARTURE, THEY DIDN'T  
20    MASQUERADE AS GT TRIBE IT'S ONLY THE DUNLAP FACTION THAT'S  
21    DOING IT SO. WHICH FACTION ADOPTED THE SAME CONSTITUTION,  
22    THE SAME CONSTITUTION AS GT TRIBE WAS ADOPTED BY CANDELARIA  
23    FACTION, DUNLAP FACTION HAS A BRAND NEW CONSTITUTION,  
24    ABOLISHED A, B, AND C MEMBERSHIPS, HAS A PEO'TSKOME, NOT A  
25    TRIBAL COUNCIL AND THERE'S NO MENTION OF AMENDING POSITIONS.  
26    NEXT QUESTION, WHO CONTINUED THE CASINO PROJECT, CANDELARIA  
27    FACTION CONTINUED IT, DUNLAP FACTION USED UP ALL THE MONEY ON  
28    NONE CASINO PURPOSES IN A MONTH, WHO RECOGNIZED THE LET'S OF

1 THE CASINO PROJECT, CANDELARIA FACTION RECOGNIZED 4.9 MILLION  
2 IN DEBTS, SETTLED THE LAWSUIT WITH SMDC, DUNLAP FACTION NEVER  
3 SETTLED, NEVER PAID A SINGLE CASINO VENDOR AND RAN AWAY FROM  
4 THAT 4.9 MILLION IN LET'S AND LET ME CLOSE WITH ONE LAST  
5 QUESTION, YOU WOULD THINK THAT THE REAL PARTY IN INTEREST,  
6 THE REAL GT TRIBE WOULD DO SOMETHING OTHER THAN A CASINO  
7 PROJECT OR SOMETHING OTHER THAN SPENDING THEIR MONEY ON  
8 LAWYERS, ON MR. POLANCO, ON THEMSELVES. YOU HEARD LINDA  
9 CANDELARIA TALK ABOUT WITH GREAT PRIDE THE INDIAN HEALTH  
10 SERVICES, THEY COULD NOT VINCE-D EVERY INDIAN HEALTH SERVICE  
11 TO ACCEPT THE MEMBERSHIP CARDS FROM THE CANDELARIA FACTION,  
12 FREE HEALTHCARE FOR ALL THE MEMBERS AND THEIR FAMILIES,  
13 THAT'S FOR REAL, NUMBER 2 THERE WAS A SCHOLARSHIP FROM CAL  
14 STATE LONG BEACH THAT'S ONE LUCKY PERSON THAT DIDN'T HAVE THE  
15 MONEY TO GO TO CAL STATE LONG BEACH THAT GOT FREE RIDE, ROOM  
16 AND BOARD, BOOKS FROM GABRIELINO-TONGVA TRIBE, THOSE GOOD  
17 WORKS WERE DONE BY THE CANDELARIA FACTION, I THINK THEY  
18 SHOWED THEY'RE THE REAL PARTY IN INTEREST, YOU HAVE NO  
19 EVIDENCE IN FRONT OF YOU AT ALL, YOU HAVE NO TESTIMONY FROM  
20 HERE AT ALL OF ANY GOOD WORKS DONE IN THE 10 YEARS THAT THE  
21 DUNLAP FACTION HAS BEEN AROUND ARE THERE --.

22 THE COURT: THANK YOU MR. STEIN.

23 MR. STEIN: THANK YOU YOUR HONOR.

24 THE COURT: OKAY SO NOW VERONICA CAN TAKE HAD YOU  
25 BACK, THANK YOU. ALL THE SAME JURY INSTRUCTIONS APPLY BY THE  
26 WAY.

27 (WHEREUPON THE JURY EXITS THE COURTROOM.).

28 THE COURT: MAKE SURE THAT YOU LEAVE YOUR PHONE

1 NUMBER WITH NELLI SO THAT YOU ARE OUT AND ABOUT SHE CAN CALL  
2 YOU, DON'T GO MORE THAN 15, 20 MINUTES AWAY FROM THE  
3 COURTHOUSE, OKAY.

4 MR. STEIN: WE'LL BE UP ON THE NINTH FLOOR.

5 THE COURT: THAT'S INFORM, OKAY.

6 MR. STEIN: AND LET ME -- IS CELL PHONE RECEPTION  
7 PRETTY GOOD ON THE NINTH FLOOR.

8 THE CLERK: THE CAFETERIA IS BETTER THAN ANYWHERE  
9 [HELS] IN THE BUILDING.

10 THE COURT: SO YOU SHOULD BE FINE. OKAY THANK  
11 YOU.

12 (BREAK TAKEN.) 10:26 AM 01:35 PM.

13 THE COURT: GABRIELINO-TONGVA TRIBE VERSUS STEIN  
14 BC361307 GOOD AFTERNOON.

15 MS. IBARRA: GOOD AFTERNOON.

16 MR. FORDYCE: GOOD AFTERNOON YOUR HONOR.

17 MR. STEIN: GOOD AFTERNOON YOUR HONOR.

18 THE COURT: I UNDERSTAND WE HAVE A VERDICT, IS THAT  
19 CORRECT MADAM.

20 THE CLERK: YES.

21 THE COURT: ACTUALLY I SHOULDN'T BE ASKING I SHOULD  
22 BE ASKING VERONICA.

23 COURT ATTENDANT: YES, YOUR HONOR.

24 THE COURT: AND THE JURORS ARE WHERE.

25 COURT ATTENDANT: WE HAVE THE ALTERNATES WAITING IN  
26 THE HALLWAY AND THE OTHERS ARE IN THE JURY ROOM.

27 THE COURT: ANY REASON WHY WE SHOULDN'T BRING THEM  
28 IN NOW? NO? GO AHEAD AND BRING THEM IN \* \* ALTERNATE JURORS

1 IN \* \*. \* \* JURY IN \* \*.

2 THE COURT: GABRIELINO-TONGVA TRIBE VERSUS JONATHAN  
3 STEIN BC361307. THE RECORD WILL REFLECT THAT ALL OF OUR  
4 JURORS ARE PRESENT AND SEATED IN THE JURY BOX. WHO IS THE  
5 PRESIDING JUROR.

6 JUROR NO. 7: I AM YOUR HONOR.

7 THE COURT: JUROR NUMBER 7 HAS THE JURY REACHED A  
8 VERDICT.

9 JUROR NO. 7: THEY HAVE YOUR HONOR.

10 THE COURT: THANK YOU WOULD YOU HAND YOUR FORMS TO  
11 THE COURT ASSISTANT.

12 COURT ATTENDANT: (INDICATING.).

13 THE COURT: THANK YOU I'D LIKE THE CLERK TO READ THE  
14 VERDICT.

15 THE CLERK: GABRIELINO-TONGVA TRIBE VERSUS JONATHAN  
16 STEIN, CASE NUMBER BC361307 WE THE JURY IN THE ABOVE ENTITLED  
17 ACTION ANSWERED THE QUESTIONS SUBMITTED TO YOU AS FOLLOWS,  
18 QUESTION ONE H DOES PLAINTIFF GABRIELINO-TONGVA TRIBE ALSO  
19 KNOWN AS THE DUNLAP FACTION HAVE THE CAPACITY TO SUE IN THIS  
20 ACTION, ANSWER YES. IF THE ANSWER TO QUESTION ONE, NO ANSWER  
21 NO FURTHER QUESTIONS AND HAVE THE FOREPERSON SIGN AND DATE  
22 THIS FORM OTHERWISE ANSWER QUESTION TWO. QUESTION TWO, DOES  
23 PLAINTIFF GABRIELINO-TONGVA TRIBE ALSO KNOWN AS THE DUNLAP  
24 FACTION HAVE STANDING IN THIS ACTION, ANSWER YES. SIGN AND  
25 DATE THIS VERDICT AND THE DESIGNATED AREA BELOW DATED JULY  
26 5TH, 2016 FOREPERSON.

27 THE COURT: OKAY THANK YOU MADAM CLERK, DID YOU SEE  
28 ANY COUNSEL WISH TO HAVE THE JURY POLLED.

1 MR. STEIN: YES.

2 THE COURT: OKAY POLLING IS WHEN WE HAVE THE CLERK  
3 RE-READ THE QUESTION TO YOU AND ASK YOU IF THAT REFLECTS YOUR  
4 PERSONAL VOTE, FOR EXAMPLE, DO I HAVE A VERDICT FORM UP HERE,  
5 FOR EXAMPLE THE CLERK WILL SAY WE THE JURY IN THE ABOVE  
6 ENTITLED ACTION ANSWER THE QUESTIONS SUBMITTED TO YOU AS  
7 FOLLOWS, ONE DOES GABRIELINO-TONGVA TRIBE ALSO KNOWN AS THE  
8 DUNLAP FACTION HAVE THE CAPACITY TO SUE IN THIS ACTION,  
9 ANSWER YES, IS THIS YOUR VOTE JUROR NUMBER ONE.

10 JUROR NO. 1: YES.

11 THE COURT: JUROR NUMBER 2.

12 JUROR NO. 2: YES.

13 THE COURT: AND SHE'LL GO DOWN ALL THAT WAY, THAT'S  
14 WHAT POLLING IS. MADAM CLERK POLL THE QUESTION.

15 THE CLERK: QUESTION ONE, DOES GABRIELINO-TONGVA  
16 TRIBE ALSO KNOWN AS THE DUNLAP FACTION HAVE THE CAPACITY TO  
17 SUE IN THIS ACTION, ANSWER, YES. JUROR NUMBER ONE IS THIS  
18 HOW HAD YOU ANSWERED.

19 JUROR NO. 1: YES.

20 THE CLERK: TWO?

21 A. YES.

22 Q. JUROR NO. 3?

23 A. YES.

24 Q. FOUR?

25 A. YES.

26 Q. FIVE?

27 A. YES.

28 Q. SIX?

1 A. YES.

2 Q. SEVEN?

3 A. YES.

4 Q. EIGHT?

5 A. YES.

6 Q. NINE?

7 A. YES.

8 Q. 10?

9 A. YES.

10 Q. 11?

11 A. YES.

12 Q. AND JUROR NUMBER 12?

13 A. YES.

14 THE CLERK: QUESTION TWO, DOES PLAINTIFF

15 GABRIELINO-TONGVA TRIBE ALSO KNOWN AS THE DUNLAP FACTION HAVE

16 STANDING IN THIS ACTION, ANSWER YES. JUROR NUMBER ONE IS

17 THIS HOW YOU ANSWERS?

18 A. YES.

19 Q. JUROR NUMBER 2?

20 A. YES.

21 Q. THREE?

22 A. YES.

23 Q. FOUR?

24 A. YES.

25 Q. FIVE?

26 A. YES.

27 Q. SIX?

28 A. YES.

1 Q. SEVEN?

2 A. YES.

3 Q. EIGHT?

4 A. NO.

5 Q. NINE?

6 A. YES.

7 Q. 10?

8 A. YES.

9 Q. 11?

10 A. YES.

11 Q. AND JUROR NUMBER 12?

12 A. YES.

13 THE CLERK: HE THANK YOU.

14 THE COURT: THANK YOU I'D LIKE THE CLERK TO RECORD  
15 THE VERDICT. OKAY AS YOU KNOW THERE'S A SECOND PHASE TO THIS  
16 TRIAL, I'M GOING TO EXCUSE YOU AND I'M GOING TO TALK TO  
17 COUNSEL FOR A MINUTE, I'M EXCUSING YOU JUST FOR 20 MINUTES,  
18 I'M GOING TO TALK WITH COUNSEL AND ASK YOU TO COME BACK AND  
19 TALK ABOUT HOW WE PLAN TO PROCEED WITH THE SECOND PHASE.  
20 OKAY? THANK YOU, SEE YOU IN 20 MINUTES \* \* JURY OUT \* \*.

21 THE COURT: OKAY COUNSEL WE HAVE TO BEGIN OUR SECOND  
22 PHASE, LET'S TALK ABOUT THAT.

23 MR. STEIN: WELL YOUR HONOR I GUESS MY FIRST  
24 QUESTION IS I'D LIKE TO JUST TAKE A LAST LOOK AT 597, I HAVE  
25 KNOW THAT IT'S APPEALABLE IN SOME LEVELS AND IT'S NOT  
26 APPEALABLE IN OTHERS AND I JUST WANTED TO CHECK THE CODE ON  
27 THAT.

28 THE COURT: 597? WHAT IS IT THAT YOU'RE ASKING FOR.

1 MR. STEIN: WHETHER THERE'S A RIGHT OF APPEAL AT  
2 THIS PRESENT TIME.

3 THE COURT: 597.

4 MS. IBARRA: CODE OF CIVIL PROCEDURE 597.

5 THE COURT: WELL LET ME READ IT AND SEE -- ARE YOU  
6 LOOKING AT IT RIGHT NOW.

7 MR. FORDYCE: I HAVE IT UP ON WEST LAW YOUR HONOR.

8 THE COURT: I'M LOOKING AT THE CODE HERE, SPECIAL  
9 DEFENSES.

10 MR. FORDYCE: YES THAT'S CORRECT YOUR HONOR.

11 (PAUSE IN PROCEEDINGS.)

12 THE COURT: YEAH, I READ IT. IT LOOKS LIKE WE'LL  
13 JUST PROCEED TO THE REST OF THE CASE.

14 MR. STEIN: THERE WOULD HAVE TO BE A MOTION TO THE  
15 COURT, RIGHT, I AGREE TO THE COURT BUT I WOULD LIKE TO MAKE A  
16 MOTION FOR DIRECTED VERDICT CONTRARY TO THE JURY.

17 THE COURT: JUDGMENT NOTWITHSTANDING THE VERDICT YOU  
18 MEAN.

19 MR. STEIN: YES JUDGMENT NOTWITHSTANDING THE  
20 VERDICT. OKAY DO YOU WANT TO.

21 MR. STEIN: YEAH ON THE CAPACITY, THE ONLY EVIDENCE  
22 BEFORE THE COURT -- BEFORE THE JURY WAS THAT THEY WERE NOT AN  
23 UNINCORPORATED ASSOCIATION. I THINK THAT THEY DIDN'T HAVE  
24 ANY DOCUMENTARY EVIDENCE SAYING THAT THEY WERE UNINCORPORATED  
25 ASSOCIATION, THE ONLY DOCUMENTARY EVIDENCE WAS THE FOURTH  
26 AMENDED COMPLAINT SAYING THEY WERE A TRIBAL NATION.  
27 FURTHERMORE, EACH OF THE WITNESSES THAT ADDRESSED THE TOPIC  
28 SAID THAT THEY WERE NOT AN UNINCORPORATED ASSOCIATION AND



1 THAT THEY WERE A TRIBAL NATION. AND WE HAD THE FOUR  
2 WITNESSES -- NIAL DO YOU HAVE THE -- THE OUTLINE, I ACTUALLY  
3 HAVE THE ACTUAL PARTS TO REAL, IF I CAN FIND THOSE FOR A  
4 MOMENT TO THE COURT.

5 MR. FORDYCE: IF YOU WANT IT ELECTRONICALLY, HERE.

6 MR. STEIN: YEAH, VIRGINIA CARMELO ON JUNE 29 PAGE  
7 14 TWO, 6 TO 143 5, SANDONNE GOAD JUNE 23 AT PAGE 137, 20 TO  
8 24 AGAIN AT JUNE 27TH AT PAGE 52 LINE 16 TO 27; SAM DUNLAP,  
9 JUNE 29TH AT PAGE 128, 14 TO 129, 10 AND AGAIN AT 110, 22 TO  
10 26, RICHARD POLANCO JUNE 29TH AT PAGE 30, 4 TO 12, EACH OF  
11 THOSE ITEMS, PLUS EXHIBIT 547 THE CONSTITUTION, PLUS EXHIBIT  
12 566 THE FOURTH AMENDED COMPLAINT ALL THOSE TOGETHER SHOW THE  
13 ONLY EVIDENCE IN FRONT OF JURY WAS THAT THEY WERE NOT AN  
14 UNINCORPORATED ASSOCIATION, THERE WAS NO EVIDENCE THAT THEY  
15 WERE, THERE WAS NO EVIDENCE THAT THEY WERE AND THAT'S WHY WE  
16 SHOULD HAVE A JUDGMENT NOT WITH [STAFRPBD]-G THE VERDICT.

17 MS. IBARRA: SO THE BURDEN ON THE FACT THAT THE  
18 TRIBE DID NOT HAVE CAPACITY TO SUE WAS ON THE DEFENDANTS AND  
19 DEFENDANTS NEEDED TO PUT FORWARD THE EVIDENCE THAT WAS  
20 UNAMBIGUOUS ENOUGH TO PERSUADE THE JURY THAT WE HAD GIVEN UP  
21 OUR STATUS AS AN UNINCORPORATED ASSOCIATION. THERE'S NO RULE  
22 THAT THEY HAD TO FILE ANY STATEMENT WITH THE SECRETARY OF  
23 STATUTE STATE, THAT'S NOT MANDATORY AND IT'S BASICALLY --  
24 THEY HAVE A RIGHT TO PROCEED AS AN UNINCORPORATED ASSOCIATION  
25 AS LONG AS THEY ARE TWO OR MORE PEOPLE WHO USE A NAME AND WHO  
26 COME INTO COURT AND WHO REQUEST -- WHO REQUEST THE JURY --  
27 THE COURT'S JURISDICTION. THAT'S ALL THEY NEEDED TO DO AND  
28 THEY HAD -- THEY HAD ASSERTED THAT BEFORE, THEY HAD NEVER

1 UNAMBIGUOUS US LEE SAID WE'RE NO LONGER THAT. THEY HAD --  
2 THE WITNESSES WHO TESTIFIED HAD SOME EARNEST STATEMENTS,  
3 SINCERE BELIEFS ABOUT WHAT THEY ASPIRED TO BE WHICH IS TO BE  
4 A FEDERALLY RECOGNIZED TRIBE BUT THEY NEVER SAID THEY HAD  
5 SOVEREIGNTY, THEY SAID THEY ASPIRED TO HAVE SOVEREIGNTY, BUT  
6 THEY DIDN'T CLAIM TO BE A SOVEREIGN GOVERNMENT WHO  
7 COULDN'T -- WHO COULDN'T USE THE UNINCORPORATED ASSOCIATION  
8 STATUTE.

9 THE COURT: DID THEY HAVE THEIR -- WAS THAT FIRST  
10 PAGE OF THE ORIGINAL COMPLAINT, WAS THAT IN EVIDENCE.

11 MS. IBARRA: IT WAS NOT IN EVIDENCE.

12 THE COURT: THERE WAS SOME TESTIMONY THOUGH WHERE  
13 THEY SAID THEY WERE AN UNINCORPORATED TRIBE AT ONE POINT,  
14 RIGHT.

15 MS. IBARRA: NONE OF THEM ADOPT THAT STATEMENT, IT  
16 WAS A STATEMENT MADE BY COUNSEL, IT WAS NEVER RE TRACK-D BY  
17 COUNSEL, IT WAS JUST WE DON'T NEED TO PLEAD OUR STANDING IN A  
18 COMPLAINT, IT'S NOT NECESSARY SO THAT'S WHY IT WASN'T PLED  
19 AND IT HASN'T BEEN PLED SINCE 2007, BUT THERE WAS NO BURDEN  
20 ON THE PLAINTIFF TO PLEAD ITS STANDING IN ITS COMPLAINT, IT  
21 WAS JUST A DESCRIPTION OF WHO THEY THOUGHT THEY WERE.

22 THE COURT: WELL WHEN THE PARTIES SAY WE'RE NOT AN  
23 UNINCORPORATED -- WHEN THE PARTIES -- WHEN THE WITNESSES SAID  
24 WE'RE NOT AN UNINCORPORATED ASSOCIATION, WE'RE A TRIBE, DOES  
25 THAT MEAN THAT LEGALLY JUST BECAUSE YOU'RE A TRIBE YOU CAN'T  
26 BE AN UNINCORPORATED ASSOCIATION.

27 MS. IBARRA: WELL YOU COULD BE A TRIBE THAT'S NOT  
28 FEDERALLY RECOGNIZED AS THEY ARE.

1 THE COURT: WHICH IS WHAT WE HAVE HERE.

2 MS. IBARRA: EXACTLY BECAUSE THERE'S NO OTHER STATUS  
3 IN CALIFORNIA, IF YOU'RE A NONE FEDERALLY RECOGNIZED TRIBE IN  
4 CALIFORNIA THEN THE ONLY WAY YOU CAN PROCEED IN COURT IS AS  
5 AN UNINCORPORATED ASSOCIATION.

6 THE COURT: WHAT I'M SAYING IS EVEN IF YOU SAY I'M A  
7 TRIBE, NOT FEDERALLY RECOGNIZED, DOES THAT AUTOMATICALLY MEAN  
8 YOU ARE NOT AN UNINCORPORATED ASSOCIATION? I DON'T THINK  
9 THERE'S ANY LAW THAT SAYS THAT.

10 MS. IBARRA: I AGREE WITH THE CORE, I DON'T THINK  
11 THAT THERE'S ANY LAW THAT SAYS THAT. AND I THINK DEFENDANTS  
12 ARGUMENT IS AMBIGUOUS, ARE THEY SAYING THAT WE ARE A  
13 SOVEREIGN AND BECAUSE WE CLAIM TO BE A SOVEREIGN WE ARE A  
14 SOVEREIGN OR ARE YOU CLAIMING THAT WE'RE JUST NOTHING. I  
15 THINK ON THE ONE HAND THEY SAY YOU'RE A SOVEREIGN WHICH YOU  
16 CLAIM TO BE WHICH IS OBJECT CHOOSE [KWROUS] LEE NOT -- AS A  
17 STATEMENT OF LAW THAT'S NOT TRUE, I CAN CLAIM TO BE A  
18 SOVEREIGN BUT I'M CLEARLY NOT A SOVEREIGN I'M A PERSON.

19 THE COURT: IT DOESN'T MAKE IT SO.

20 MS. IBARRA: IT DOESN'T MAKE IT SO JUST BECAUSE HAD  
21 YOU SAY IT, AND THEY CLEARLY HAVE ASPIRATIONS AS TO THAT BUT  
22 THEY DON'T CLAIM THAT THEY ARE H THEY CLAIM THAT THEY DON'T  
23 HAVE FEDERAL RECOGNITION AND THAT THE FEDERAL GOVERNMENT DOES  
24 NOT RECOGNIZE THEM AS A SOVEREIGN THEY UNDERSTAND NOW THAT  
25 [H\*] AS OPPOSED TO WHEN MR. STEIN REPRESENTED THEM, THE STATE  
26 CONFERS UPON THEM NO SPECIAL STATUS AS A STATE RECOGNIZED  
27 TRIBE, THERE'S NO SUCH THING. SO THEY ACKNOWLEDGE THAT UNDER  
28 THE LAW THEY ARE -- THEY'RE AN UNINCORPORATED ASSOCIATION BUT

1 I THINK EACH OF THE WITNESSES WAS REFERRING TO THE STATEMENT  
2 OF UNINCORPORATED ASSOCIATION THAT WAS FILED BY MS. LINDA  
3 CANDELARIA IN DECEMBER OF 2006 WHICH THEY STRONGLY OBJECTED  
4 TO AND THEY WANTED TO BE NO CONFUSION BETWEEN THEIR ENTITY  
5 AND THE ENTITY REPRESENTED BY LINDA CANDELARIA THAT HAD FILED  
6 THAT STATEMENT.

7 THE COURT: OKAY ANYTHING FURTHER.

8 MR. STEIN: YES YOUR HONOR. THE PROBLEM WE ARE A  
9 TRIBE NOT AN UNINCORPORATED ASSOCIATION THAT THEY WERE  
10 ACTUALLY ASKED ARE YOU AN UNINCORPORATED ASSOCIATION. YOU  
11 HAVE ALSO HAVE THE ALLEGATION OF THE COMPLAINT, I MEAN WHILE  
12 IT'S NOT -- IT WAS IN FRONT OF JURY BECAUSE IT WAS ADOPTED,  
13 IF YOU SAY IN YOUR COMPLAINT THAT YOU REMEMBER ARE A TRIBAL  
14 NATION AND YOU CHANGE IT FROM UNINCORPORATED ASSOCIATION,  
15 YOU'RE STUCK WITH THAT REPRESENTATION OF FACT, IN OTHER WORDS  
16 THAT IS A REPRESENTATION MADE THAT MAKES IT ALL THE WAY TO  
17 TRIAL, NOW IN THIS CASE IT'S ESPECIALLY REPRESENTATION  
18 BECAUSE THIS IS A FOURTH AMENDED COMPLAINT SPECIFICALLY  
19 REQUESTED BY CURRENT COIN TO WHAT HE SAID CLEAN EVERYTHING  
20 UP. SO AT THAT POINT YOU'RE SAYING YOU'RE SOMETHING OTHER  
21 THAN AN UNINCORPORATED ASSOCIATION AND YOU'RE AFFIRMATIVE  
22 [HRAOEF] GOING AWAY FROM THE PRIOR PLEADING WHICH SAID THAT  
23 THEY WERE UNINCORPORATED ASSOCIATION. SO I THINK THAT --.

24 THE COURT: THEY NEVER ADOPTED THAT, RIGHT? THEY  
25 NEVER ADOPTED THE UNINCORPORATED ASSOCIATION PLEADING.

26 MR. STEIN: AGAIN THIS IS A JUDGMENT NOTWITHSTANDING  
27 THE VERDICT TO THE COURT SO AT THIS POINT THE PLEADINGS DO  
28 MATTER. IN OTHER WORDS IF THEY PLEAD A CERTAIN WAY FOR THEM

1 TO NOW SAY OH NO NO [THO] WE DIDN'T REALLY [PHAEP] IT.

2 THE COURT: WELL THEY CHANGED IT.

3 MR. STEIN: YEAH THEY PURPOSELY CHANGED IT TO TRIBAL  
4 NATION AND AGAIN WE SAW THAT --.

5 THE COURT: BUT DOES THAT EXCLUDE -- BECAUSE THEY'RE  
6 A TRIBAL NATION NOT FEDERALLY RECOGNIZED, DOES THAT EXCLUDE  
7 THEM FROM BEING AN UNINCORPORATED ASSOCIATION? I DON'T THINK  
8 BECAUSE YOU SAY YOU'RE A TRIBE MEANS YOU'RE NOT AN  
9 UNINCORPORATED ASSOCIATION, PARTICULARLY WHEN YOU'RE NOT  
10 FEDERALLY RECOGNIZED. I MEAN YOU'RE TRYING TO SAY JUST  
11 BECAUSE WE SAY WE'RE A TRIBE, THAT MEANS THAT WE CAN NEVER BE  
12 AN UNINCORPORATED ASSOCIATION.

13 MR. STEIN: I'M NOT SAYING THAT, I'M NOT SAYING THAT  
14 AND IT'S A GOOD POINT THAT THE COURT MAKES, HOWEVER WHEN THEY  
15 ASK QUESTIONS -- ANSWER QUESTIONS, ARE YOU AN UNINCORPORATED  
16 ASSOCIATION AND THEY SAY NO. WHEN THEY WRITE A COMPLAINT  
17 THAT HAD UNINCORPORATED ASSOCIATION AND THEY CHANGED IT TO  
18 TRIBAL NATION, THOSE ARE AFFIRMATIVE ACTS THAT BIND THEM TO  
19 THE NEW POSITION AND THAT'S WHY A JUDGMENT NOTWITHSTANDING  
20 THE VERDICT COULD BE DIFFERENT FROM THE JURY VERDICT BECAUSE  
21 WE HAVE THE BENEFIT OF SEEING THAT. IN ADDITION THE  
22 AFFIRMATIVE DEFENSES THAT TALK ABOUT NONE ENTITIES, IT'S A  
23 CALIFORNIA AFFIRMATIVE DEFENSES SECTION 18: 30 ON NONE  
24 ENTITIES AND I READ AS FOLLOW, AS A MATTER OF LAW A CIVIL  
25 ACTION MAY BE MAINTAINED ONLY BY OR AGAINST A LEGAL PERSON,  
26 THAT IS A NATURAL PERSON OR A COULD GO [TPHAEUZ] [ABL]  
27 ARTIFICIAL PERSON. A NONE ENTITY IS INCAPABLE OF SUING OR  
28 BEING SUED. WHAT WE'RE DEALING WITH IS A NONE ENTITY BECAUSE

1 IT IS NOT A COULD GO [TPHAEUZ] [ABL] ARTIFICIAL PERSON,  
2 THAT'S WHY I ASKED ARE YOU AN UNINCORPORATED ASSOCIATION, AND  
3 THEY IS HE NO, NOBODY SAID YES AND THE COMPLAINT DIDN'T SAY  
4 YES. IF SOMEBODY HAD SAID YES OR THE COMPLAINT HAD SAID YES  
5 WE'RE AN UNINCORPORATED ASSOCIATION, THEN THE COURT'S LOGIC  
6 WOULD PREVAIL, THE COURT'S LOGIC WOULD SAY WELL THEY CAN SAY  
7 THEY'RE A TRIBAL NATION BUFF THAT DOESN'T MEAN THEY'RE NOT AN  
8 UNINCORPORATED ASSOCIATION.

9 THE COURT: COUNSEL LET ME ASK YOU THAT TOO, ISSUES  
10 OF CREDIBILITY, LET'S SEE THE JURY DECIDED I'M GOING TO  
11 DISBELIEVE THAT TESTIMONY, AREN'T THEY FREE TO DID I SAY  
12 BELIEVE THE TESTIMONY.

13 MR. STEIN: BUT THERE IS NO TESTIMONY TO BELIEVE,  
14 THAT'S THE PROBLEM, THEY ARE FREE TO DID I SAY BELIEVE THE  
15 TESTIMONY THAT I AM NOT AN UNINCORPORATED ASSOCIATION, BUT  
16 THERE IS NO AFFIRMATIVE TESTIMONY SAYING THAT THEY ARE.

17 MS. IBARRA: IF I CAN BE HEARD THEY COULD ALSO  
18 BELIEVE THAT THERE WAS A QUESTION OF LAW AND THAT THE  
19 WITNESSES WEREN'T [HEBGS] SPECULATION-D TO KNOW WHAT THEIR  
20 STATUS -- YOU KNOW THEIR STANDING PURSUANT IN COURT WHICH  
21 SPECIFIC STANDING GAVE THEM THAT STATUS. THE LANGUAGE --.

22 THE COURT: WELL IT WASN'T THEIR BURDEN, IT WAS  
23 THEIR BURDEN TO DISPROVE IT.

24 MS. IBARRA: THAT'S RIGHT. AND ON THAT SAME POINT,  
25 I BELIEVE THAT THE REASON THAT IN 2007 DURING THE FIRST  
26 AMENDED COMPLAINT THE LANGUAGE ABOUT IT BEING AN  
27 UNINCORPORATED ASSOCIATION WAS TAKEN OFF WAS BECAUSE IT WAS  
28 NOT THE PLAINTIFF BURDEN TO PLEAD OR TO PROVE THAT HAD HE HAD

1 STAND [SKP-G] IF THEY HAD LEFT THAT LANGUAGE THERE H MR.  
2 STEIN WOULD HAVE COME IN, MR. STEIN WOULD HAVE DEMURRED TO IT  
3 ON THE BASIS THAT LINDA CANDELARIA'S GROUP WAS THE  
4 UNINCORPORATED ASSOCIATION REFERRED TO HERE AND THAT WOULD  
5 HAVE ENDED IT AT THAT POINT AND THAT WAS OF  
6 [COUNSEL'S|COUNSELS] REASONING WE DON'T HAVE THE BURDEN TO  
7 PLEAD IT, WE DON'T HAVE THE BURDEN TO PROVE IT, IF WE GET TO  
8 TRIAL WE'LL DEAL WITH IT THEN AND THIS IS EXACTLY WHAT HE  
9 HAVE HAVE NOT ACTUALLY DID HAPPEN HE BROUGHT IN THIS OTHER  
10 [TKPWRAOUFP] AND HE SAID THIS IS -- THIS IS THE REAL PARTY IN  
11 INTEREST BUT WE NEVER HAD THE BURDEN TO PLEAD IN THE  
12 COMPLAINT. THIS WAS -- INSTEAD IT WAS JUST THEIR DESCRIPTION  
13 ABOUT WHO THE ENTITY WAS AND THEY LEFT IT AND THEN WE CAME IN  
14 HERE AND THE JURY HAD YOU KNOW RENDERED THEIR VERDICT.

15 MR. STEIN: YOUR HONOR WE HAVE NO -- WE HAVE NO DUTY  
16 TO COME FORWARD ON DEMURRER WITH AN AFFIRMATIVE DEFENSE WE  
17 CAN PRESENT THAT AFFIRMATIVE DEFENSE AT TRIAL WHICH IS WHAT  
18 WE DID. YOU KNOW GOING BACK TO ONE CALIFORNIA AFFIRMATIVE  
19 DEFENSES SECTION 18 30 IT CONTINUES THE OBJECTION THAT A LIT  
20 [TKPWABT] IS A NONE ENTITY COULD BE DESCRIBED AS A FATAL OR  
21 TOTAL LACK OF CAPACITY AND THE OBJECTION QUOTE IS NOT SUBJECT  
22 TO WAIVER AS IN THE CASE OF MISNOMER OR LACK OF LEGAL  
23 CAPACITY BECAUSE THE DEFECT IS JURISDICTIONAL, THE COURT'S  
24 SIT TO SETTLE DISPUTES BETWEEN EXISTING PARTIES AND WHEN THE  
25 DEFENDANT IS NOT A LEGAL PERSON, NO LAWFUL JUDGMENT CAN BE  
26 RENDERED AGAINST SUCH A NONE ENTITY, THAT'S WHAT WE'RE  
27 DEALING WITH HERE IS A NONE ENTITY, WE CARE [HOED] OUR BURDEN  
28 OF PROOF TO SHOW IT'S A NONE ENTITY, I BELIEVE THE JURY

1 INSTRUCTIONS SHOULD HAVE INCLUDED THIS EXACT LANGUAGE, WE  
2 ASKED FOR THIS EXACT QUOTE IN VARIOUS FORMS TO BE PUT IN THE  
3 JURY INSTRUCTIONS AND IT WAS REJECTED. WE'RE SAYING IT NOW  
4 AND WE'RE HOPING THAT THE COURT WILL DIRECT THE JUDGMENT NOT  
5 WITHSTANDING THE VERDICT.

6 THE COURT: I DON'T REMEMBER IF THAT WAS REQUESTED.

7 MS. IBARRA: I DON'T REMEMBER THAT BEING REQUESTED  
8 EITHER.

9 THE COURT: FOR A JURY INSTRUCTION BUT I DON'T THINK  
10 IT REALLY MATTERS.

11 MR. STEIN: [KWRE] WE HAD SIX JURY INSTRUCTION  
12 [STPHAOZ] LAST THING ON THIS, I THINK IT WOULD BE A  
13 FUNDAMENTAL INJUSTICE IF BECAUSE THEY'RE SEEKING FEDERAL  
14 RECOGNITION, THEY HAVE SINCERE BELIEF THEY'RE A TRIBAL ENTITY  
15 THAT IS NOT FEDERALLY RECOGNIZED THEY HAVE NO STATUS TO COME  
16 INTO COURT AND INVOKE THE JURISDICTION OF THE COURT, YOU'RE  
17 BASICALLY SAYING YOU CAN NEVER SUE ANYBODY OR BE SUED BECAUSE  
18 YOU CLAIM TO BE PURSUING FEDERAL RECOGNITION AND YOU CALL  
19 YOURSELF A TRIBAL ENTITY THEN YOU CAN NEVER COME TO COURT,  
20 [THABZ] THE ONLY SOLUTION THAT COUNSEL IS REQUESTING AND  
21 THAT'S A FUNDAMENTAL INJUSTICE AND THE LAW CANNOT BE READ IN  
22 THAT WAY.

23 MR. STEIN: YOUR HONOR THE FUNDAMENTAL INJUSTICE IS  
24 GETTING A JUDGMENT AGAINST YOU ON BEHALF OF SOMETHING THAT IS  
25 NOT A LEGAL ENTITY, THAT'S A FUNDMENT INN [SKWRUS] TIE HERE,  
26 WE'VE BEEN GOING ROUND AND WOUND FOR 10 YEARS WITH THIS AND  
27 THEY ARE NOT A LEGAL ENTITY WHICH IS WHAT WE PROVED AND WHAT  
28 THEIR COMPLAINT SAYS, IF THEY'RE NOT A LEGAL INTER [TAOEP]



1 THAT THE FUND [SKWRUS] WOULD BE THIS COURT [A\*RBGT]-G ON  
2 BEHALF OF SOMETHING THAT IS NOT A LEGAL ENTITY TO GET A  
3 JUDGMENT AGAINST A FREE PERSON. AND THAT PERSON'S SMDC AND  
4 MIGHT BE ME PERSONALLY AS WELL AND THAT TO ME IS A FAR MORE  
5 FUND [SKWRUS] THAT PEOPLE THAT FAILED TO SHOW THEIR LEGAL  
6 STATUS, THEY FAILED TO HAVE ANY GOVERNMENTAL FILINGS  
7 WHATSOEVER, THEY ADMIT THAT THEY'RE NOT A LEGAL ENTITY AND  
8 THEN HEARSAY COUNSEL SAYING WELL NO NO NO, OVERLOOK ALL THE  
9 TESTIMONY IN THE CASE AND FIND THEM TO BE A LEGAL ENTITY SO  
10 WE CAN GET A JUDGMENT, SO A NONE PERSON CAN GET A JUDGMENT IN  
11 A COURT AGAINST A REAL PERSON.

12 MS. IBARRA: ALSO THERE WAS TESTIMONY, JUST YOUR  
13 HONOR, FROM MS. SANDONNE GOAD WHO TALKED ABOUT THE FACT THAT  
14 SHE UNDERSTOOD IN HER HEART SHE UNDERSTOOD THAT THEY WERE A  
15 TRIBE BUT SHE UNDERSTOOD THAT THAT'S NOT THE WAY THAT THEY  
16 WERE TREATED IN COURT. AND THAT IS ABOUT AS CLOSE AS YOU'RE  
17 GOING TO GET A LAY WITNESS COMING TO ADMIT THAT THEY'RE AN  
18 UNINCORPORATED ASSOCIATION FOR PURPOSES OF COMING INTO COURT  
19 AND HOW THEY'RE TREATED HERE.

20 THE COURT: WELL I'M GOING TO DENY YOUR MOTION.  
21 OKAY SO HOW ARE WE GOING TO HANDLE THE SECOND PART OF THE  
22 TRIAL? ARE YOU READY TO DO AN OPENING STATEMENT BECAUSE YOU  
23 HAVE A SECOND PHASE THAT WE'RE GOING TO DO IT THE SAME WAY  
24 PRETTY MUCH.

25 MS. IBARRA: I MEAN I WISH IT WAS TOMORROW BUT IT  
26 THE COURT MAKES HUSBAND DO IT TODAY I'LL DO IT TODAY.

27 MR. STEIN: WE'RE READY.

28 THE COURT: ARE YOU READY OR NOT.

1 MS. IBARRA: I WOULD RATHER DO IT TOMORROW, I REALLY  
2 DID NOT ANTICIPATE THAT IT WOULD BE THIS SOON.

3 THE COURT: OKAY WELL LET'S TALK ABOUT THE TRIAL  
4 THEN A LITTLE BIT. IF WE DO IT TOMORROW YOU CAN BEGIN YOUR  
5 OPENING TOMORROW.

6 MS. IBARRA: AND I THINK IT'S 30 MINUTES BECAUSE A  
7 LOT OF THE EVIDENCE THAT WE WERE INTENDING TO USE HAS ALREADY  
8 COME IN AND THEY HAVE A PRETTY GOOD UNDERSTANDING ABOUT WHAT  
9 THE CASE IS ABOUT SO I THINK IT WOULD BE 30 MINUTES. AND  
10 THEN WE WERE TALKING ABOUT HAVING SOME NEW WITNESSES THAT WE  
11 HAVEN'T HAD BEFORE.

12 THE COURT: OKAY.

13 MS. IBARRA: SO THE NAMES THAT HAVE COME UP WOULD BE  
14 PATRICIA NEMINSKI AND DIANNA SIMENTAL SO TAKING IT IN  
15 CHRONOLOGICAL ORDER THESE WERE PEOPLE THAT WERE PRESENT THE  
16 DAY THE SMDC AGREEMENT WAS SIGNED AND MR. VICTOR VELASQUES  
17 WHO WAS ALSO PART OF THE TRIBAL COUNCIL AT THAT TIME. WE'D  
18 LIKE TO GET MS. ELIZABETH ARONSON HERE BECAUSE SHE WAS A KEY  
19 WITNESS AND SHE WASN'T ABLE TO TESTIFY AT THE REAL PARTY IN  
20 INTEREST CASE BUT IF WE DON'T THEN WE WOULD GO BACK TO  
21 [SRAEURPBLG] CARMELO AND RICHARD POLANCO AND SAM DUNLAP FOR  
22 ALL OF THEM --.

23 THE COURT: IF YOU GO BACK YOU KNOW YOU'RE NOT GOING  
24 TO REHASH THE THINGS --.

25 MS. IBARRA: WE'RE NOT.

26 THE COURT: OKAY.

27 MS. IBARRA: AND THE MAIN PART -- I THINK THAT  
28 THEY'VE HEARD A LOT OF ABOUT THE CONVERSION CLAIM I THINK

1     THEY'VE HEARD A LOT ABOUT THE TRACE BECAUSE THERE'S A OVERLAP  
2     THERE.   THERE MIGHT BE ONE OR TWO ELEMENTS OF TRADE SECRET  
3     THAT WE HAVEN'T COVERED BUT FOR THE MOST PART EH CONVERSION  
4     CLAIM, THEY'VE HEARD A LOT OF EVIDENCE AND THE MAIN -- AND  
5     EVEN BREACH OF CONTRACT THEY HEARD A LOT OF THAT EVIDENCE AS  
6     WELL.   WHAT THEY HAVEN'T HEARD IS THE PART HAVING TO DO WITH  
7     MR. STEIN PERFORMING SERVICES AS A LAWYER AND THE MALPRACTICE  
8     CLAIM AND THOSE ALSO DOVETAILS WITH BREACH OF FIDUCIARY DUTY.  
9     THOSE ARE VERY CLOSELY RELATED CLAIMS.   SO THAT'S GOING TO BE  
10    THE KEY PART OF OUR CASE GOING FORWARD, WE'LL TRY TO FILL IN  
11    SOME ELEMENTS FOR BREACH OF CONTRACT AND FOR TRADE SECRET BUT  
12    WE'RE NOT REHASHING CONVERSION FOR THE MOST PART.

13           THE COURT:   WELL IN TERMS OF -- YOUR OTHER CLAIMS  
14    ARE CONVERSION, BREACH OF FIDUCIARY DUTY, BREACH OF CONTRACT,  
15    MALPRACTICE.

16           MS. IBARRA:   BREACH OF CONFIDENCES WHICH IS RELATED  
17    TO BREACH OF [TKAOUT], BREACH OF GOOD FAITH AND FAIR DEAL  
18    WHICH IS ALSO CLOSELY RELATED TO THE BREACH OF CONTRACT AND  
19    THEN WE HAVE ALTEREGO AND WE HAVE A RESCISSION CLAIM BASED ON  
20    \$3390 WHICH THE COURT IS AWARE WHEN A LAWYER END [TPHAOERZ] A  
21    BUSINESS ARRANGEMENT WITH CLIENTS.

22           THE COURT:   OR [WHAPDZ]?   HUH BUSINESS RELATIONSHIP  
23    WITH YOUR CLIENT, THE CLIENT CAN ELECT TO [SEBD] THE  
24    CONTRACTOR DECLARE IT INVOICED.

25           MS. IBARRA:   RIGHT IT'S NOT --.

26           THE COURT:   OR VOIDABLE -- I THINK IT'S VOIDABLE AT  
27    THE CLIENTS ELECTION.

28           MS. IBARRA:   THAT'S RIGHT VOIDABLE AT THE CLIENT

1 ELECTION AND THAT'S IN A SEPARATE CLAIM THAT WE HAVE AS WELL  
2 BUFF IT'S ALSO RELATED TO THE MALPRACTICE AND BREACH OF  
3 FIDUCIARY DUTY, WE THINK ALL THE ELEMENTS COME IN THOSE.

4 MR. STEIN: THERE'S BEEN NO SUCH ELECTION THOUGH.

5 THE COURT: THEY'RE DOING IT NOW. SO WHAT IS  
6 YOUR -- HOW MANY -- WHO ARE YOUR WITNESSES.

7 MR. STEIN: YOUR HONOR DEFENDANTS WITNESSES WOULD BE  
8 STEVEN JOHNSON, BARBARA GARCIA WE WOULD BRING BACK.

9 THE COURT: FOR WHAT IS SHE GOING TO TESTIFY TO.

10 MR. STEIN: PERFORMANCE, PERFORMANCE OF THE SMDC  
11 AGREEMENT, I MEAN THEY'RE KIND OF TAKING A SHOTGUN APPROACH  
12 SAYING EVERYTHING THAT COULD GO WRONG HAS GONE WRONG SIX  
13 YEARS AFTER THE FACT AND THERE WAS PARTIAL PERFORMANCE FOR  
14 THESE SIX YEARS.

15 THE COURT: BUT SHE WASN'T THE ONE PERFORMING,  
16 RIGHT, YOU WERE THE ONE PERFORMING AND SMDC I GUESS.

17 MR. STEIN: THAT'S RIGHT.

18 THE COURT: SO WHO IS THE PRINCIPLE FOR SMDC?

19 MR. STEIN: JONATHAN STEIN, SO I WOULD BE ANOTHER  
20 WITNESS.

21 THE COURT: I'M NOT SURE MS. GARCIA HAS MUCH TO ADD  
22 IN THAT REGARD MAYBE WE CAN TALK ABOUT IT BEFORE YOU CALL  
23 HER, BUT SHE SEEMED MORE LIKE AN ADMINISTRATOR.

24 MR. STEIN: AND THEN WE HAVE OUR EXPERT, OF COURSE.

25 THE COURT: WHO IS YOUR EXPERT.

26 MR. STEIN: MR. MILLS.

27 MS. IBARRA: YOUR HONOR WE HAVE TWO EXPERTS, I  
28 FORGOT ABOUT THOSE.

1 MR. STEIN: AND THEN WE WOULD HAVE LORNA DERTADIAN.

2 THE COURT: AND THE WHO DID YOU SEE SHE -- IS IT  
3 SHE.

4 MR. FORDYCE: YES.

5 MR. STEIN: YES.

6 THE COURT: AND WHAT IS SHE GOING TO SAY, SHE WROTE  
7 THE TALLEY REPORT THAT SHOWS -- AND STEVEN JOHNSON DID THE --  
8 DID THE FIGURES TO SHOW THE AMOUNTS OWED. WE WOULD ALSO HAVE  
9 DAN CRANE OBVIOUSLY COMFORT CRANE AGREEMENT.

10 THE COURT: OKAY. AND YOUR EXPERT IS WHAT KIND OF  
11 EXPERT.

12 MR. STEIN: AN EXPERT ON THE ATTORNEY -- THE  
13 FORMATION OF THE ATTORNEY-CLIENT RELATIONSHIP.

14 THE COURT: ATTORNEY-CLIENT AND MALPRACTICE.

15 MR. STEIN: AND THE MALPRACTICE THAT OCCURRED.

16 THE COURT: [SKPUF] --.

17 MR. STEIN: AND ALSO WE'LL BRING FORWARD RAE  
18 LAMOTHE.

19 THE COURT: WHAT IS HE GOING TO SAY.

20 MR. STEIN: RAE LAMOTHE IS A WOMAN.

21 MR. FORDYCE: R A E YOUR HONOR.

22 MR. STEIN: AND SHE'S GOING TO SAY THERE WAS NO  
23 ATTORNEY-CLIENT RELATIONSHIP WITH MR. STEIN SHE WAS THE  
24 TRIBAL GENERAL COUNSEL AT THE TIME.

25 MS. IBARRA: I'M NOT SURE SHE'S GOING TO SAY THAT  
26 BECAUSE HOPEFULLY SHE'LL BE HERE TO TESTIFY.

27 I FORGOT MS. MARILYN BARRETT WHO WAS THE ATTORNEY  
28 WHO REPRESENTED THE TRIBE AND WAS HIRED BEFORE THE LIBRA

1 INVESTORS, SO TWO DAYS BEFORE THE LIBRA FUNDS CLOSED. I  
2 FORGOT ABOUT HER AND THEN THEIR EXPERTS ARE.

3 THE COURT: WHAT ARE THEY TESTIFYING ABOUT.

4 MS. IBARRA: SO ONE IS AN EXPERT ON MALPRACTICE AND  
5 THE RULES OF ETHICS AND THE EQUATION OF THE ATTORNEY-CLIENT  
6 RELATIONSHIP. AND THEN THE SECOND ONE IS AN INDIAN LAW  
7 EXPERT AND I BELIEVE MR. STEIN HAS DESIGNATED HIMSELF AS AN  
8 INDIAN LAW EXPERT FOR HIMSELF AND SMDC.

9 MR. STEIN: I DON'T THINK THERE'S NO INDIAN LAW  
10 HERE, YOUR HONOR.

11 THE COURT: WHAT IS THE INDIAN LAW FOR --.

12 MS. IBARRA: THE INDIAN LAW IS -- THE SMDC AGREEMENT  
13 GRANTS MR. STEIN 10 PERCENT OF THE HYPOTHETICAL CASINO IN  
14 L.A. COUNTY, SO OUR INDIAN LAW EXPERT WILL TESTIFY THAT UNDER  
15 THE SOLE PROPRIETOR PROVISION THAT HAS BEEN LONG ESTABLISHED  
16 BY THE INDIAN GAMING COMMISSION AND IF THIS TRIBE EVER GAINED  
17 FEDERAL RECOGNITION THROUGH THE SMDC AGREEMENT, THEY WOULD  
18 HAVE INVALIDATED THAT. SO OUR THEORY IS THAT THE REASON MR.  
19 STEIN FAILED TO PURSUE FEDERAL RECOGNITION THAT HE KNEW THAT  
20 IF THIS TRIBE HAD REGAINED FEDERAL RECOGNITION THAT HE WOULD  
21 LOSE HIS 10 PERCENT REVENUE WHICH IS WHY HE SPENT ALL THIS  
22 TIME SORT OF LOBBYING SACRAMENTO AND WRITING ALL THESE LAW  
23 REVIEW ARTICLES AND PERSUADING US THAT WE HAD SPECIAL STATUS  
24 UNDER CALIFORNIA LAW THAT WE COULD PURCHASE SEWER -- THAT THE  
25 TRIBE COULD PURSUE GAMING IN LOS ANGELES WITHOUT FEDERAL  
26 RECOGNITION SO WE THINK THAT THAT WHOLE THING WAS AN INHERENT  
27 CONFLICT OF INTEREST IN THE RULES OF [EGT] [EUBGDZ] AND IT  
28 WAS ALSO -- IT WAS ALSO NEVER DISCLOSED TO US THAT THE SMDC

1 AGREEMENT HAD TWO KEY PROVISIONS, FEDERAL RECOGNITION AND  
2 GAMING AND IT WAS NEVER DISCLOSED TO US THAT HE HAD  
3 UNILATERALLY ABANDONED FEDERAL RECOGNITION BECAUSE IT WOULD  
4 HAVE -- IT WAS AGAINST HIS FINANCIAL INTEREST TO DO SO.

5 MR. STEIN: YOUR HONOR.

6 THE COURT: UH-HUH.

7 MR. STEIN: THAT'S COMPLETELY FABRICATION, FEDERAL  
8 RULES DON'T SAY ANYTHING LIKE THAT, THE SOLE PROPRIETOR ONLY  
9 MATTERS IF YOU ARE AN EXISTING FEDERALLY RECOGNIZED TRIBE SO  
10 SHE'S BRINGING IN -- SHE'S BRINGING IN AN [EPT] TO SAY IF YOU  
11 [REU] FEDERALLY RECOGNIZED TRIBE THEN HAD YOU CAN'T HAVE AN  
12 AGREEMENT LIKE THIS.

13 MS. IBARRA: THAT'S RIGHT.

14 MR. STEIN: BUT THEY WERE NOT FEDERALLY RECOGNIZED  
15 AND YOU HAVE A CHANCE TO AMEND ANY AGREEMENT BEFORE YOU DO  
16 GET FEDERAL RECOGNITION SO WHAT YOU'RE DOING IS YOU HAVE THIS  
17 ENTIRE FABRICATION BUILT UP ON THE IDEA THAT IF YOU'RE  
18 FEDERALLY RECOGNIZED YOU CAN'T HAVE A CONTRACT LIKE THIS,  
19 THEY'VE ADMITTED IN THE TRIAL THEY'RE NOT FEDERALLY  
20 RECOGNIZED SO I THINK WE SHOULD HAVE A 402 HEARING, PULL THAT  
21 EXPERT TO SEE WHAT HE SAYS OTHERWISE IT WOULD BE 352 [PREPL]  
22 TO THE JURY TO SAY OH, YOU KNOW THIS WHOLE FABRICATION  
23 ACTUALLY COULD BE THE CASE WHEN IN FACT IT'S ALL FABRICATED  
24 BECAUSE IT ONLY APPLIES TO FEDERAL RECOGNITION WE NEED A 402  
25 HEARING OTHERWISE EVERYTHING THAT THAT EXPERT IS GOING TO SAY  
26 FALLS UN 352.

27 THE COURT: WELL LET ME ASK, WAS IT EXPLICITLY  
28 STATED IN THE SMDC AGREEMENT THAT FEDERAL RECOGNITION WOULD

1 BE PURSUED.

2 MS. IBARRA: YES.

3 MR. STEIN: YES.

4 THE COURT: OKAY WELL.

5 MR. STEIN: BUT THE IDEA THAT WOULD BE PURSUED AND  
6 YOU GET 10 PERCENT, YOU CAN DO [POEGT] OF THOSE, THAT'S WHY I  
7 WANT A 402 HEARING YOU'LL HEAR IT FROM THE EXPERT THAT IN  
8 FACT THIS WHOLE THING IS A FABRICATION, THERE IS NO SUCH SOLE  
9 PROPRIETOR RULE.

10 THE COURT: DID YOU DEPOSE THE EXPERT.

11 MR. STEIN: I TRIED TO YOUR HONOR BUT WE ARE  
12 DISALLOWED BECAUSE OF UN [TOEUPL] LEE [TPHES].

13 MS. IBARRA: UNTIMELY.

14 MR. STEIN: BUT WE SPECIFICALLY ASKED TO HE DID HE  
15 POSE THE EXPERT.

16 MS. IBARRA: BUT THERE WAS A DECLARATION FROM THE  
17 PRIOR EXPERT THAT WAS ENGAGED IN THIS MATTER FROM 2007 WHO  
18 HAD BASICALLY GIVEN THAT OPINION IN 2007, OUR NEW EXPERT --  
19 THAT YOU KNOW THE EXPERT FROM 2007 IS NO LONGER AVAILABLE SO  
20 WE GOT A NEW EXPERT WHO IS GOING TO SAY THE SAME THING,  
21 NOTHING HAS CHANGED, SO THIS OPINION IS NOT NEW, IT'S BEEN A  
22 PART OF THIS CASE SINCE 2007.

23 THE COURT: OKAY. ALL RIGHT I DON'T SEE ANY REASON  
24 TO EXCLUDE IT BASED ON WHAT YOU'VE JUST SAID.

25 MR. STEIN: WE ALSO HAVE --.

26 THE COURT: IT SOUND LIKE THAT OPINION HAS ACTUALLY  
27 BEEN AROUND FOR A WHILE.

28 MR. FORDYCE: WELL YOUR HONOR I THINK HER HONOR DID



1 ADDRESS THE 2007 DECLARATION AND SAID THAT WAS NOT COMING IN  
2 THAT EXPERT WAS NOT AVAILABLE FOR DEPOSITION, NOT AVAILABLE  
3 FOR TRYING SO IN OTHER WORDS IT DIDN'T MATE ANY STATUTE  
4 [RAO\*E] REQUIREMENTS UNDER THE DISCOVERY ACT SO I THINK MAYBE  
5 THAT WAS THE FIRST OF FINAL STATUS CONFERENCES SO THE 2007  
6 DECLARATION MY HUNDRED DOLLARS WAS IT WAS OUT.

7 MR. STEIN: AND THAT TECH [KHRAEUGS] DOESN'T.

8 THE COURT: IT WOULDN'T COME IN ANY WAY.

9 MS. IBARRA: YEAH IT'S NOT COMING THAT.

10 THE COURT: NO NO.

11 MR. STEIN: AND THAT DECLARATION DOESN'T MENTION THE  
12 SOLE PROPRIETOR RULE.

13 MS. IBARRA: YES, IT DOES.

14 MR. STEIN: WHAT SHE DID WHEN SHE COULDN'T GET THAT  
15 TECH [KHRAEUGS] IN.

16 MS. IBARRA: YES, IT DOES.

17 MR. STEIN: DURING THE FINAL STATUS CONFERENCES I  
18 HAVE THIS NEW EXPERT AND WE SAID WE WANT TO DEPOSE HIM AND  
19 APPARENTLY WE MISSED BY A DAY BY THIS COURT NOW TO  
20 [TKAO\*EFRPB] A 402 HEARING FROM THE SAME EXPERT \*\* BASED  
21 [HOPB] HOW PREJUDICIAL FROM THE COMPLETE FABRICATION OF WHAT  
22 THE FEDERAL REGULATIONS ARE SINCE THEY ALREADY ADMITTED  
23 THEY'RE NOT A FEDERALLY RECOGNIZED TRIBE IS A COMPLETE  
24 FABRICATION AND THE [HR\*EPT] SHOULD NOT REACH THE JURY UNTIL  
25 WE SEE WHAT IT IS HE'S GOING TO SAY BECAUSE WE ARE NOT  
26 DEALING WITH A FEDERALLY RECOGNIZED TRIBE, THERE IS NO SOLE  
27 PROPRIETOR RULE AND THE SOLE PROPRIETOR RULE WOULD NOT APPLY  
28 TO AN INTEREST IN SLOT MACHINE REVENUES AS COMPARED TO AN

1 OWNERSHIP OF THE CASINO, SO YOU'VE GOT TWO LEVELS OF  
2 FABRICATION HERE YOUR HONOR SPRUNG AT THE LAST MINUTE ONLY  
3 WHEN THEY COULD NOT GET A DECLARATION IN AND THE DECLARATION  
4 ADDRESSED TOTALLY DIFFERENT TOPICS.

5 MS. IBARRA: NO. SO THERE WAS NEVER ANY OBJECTION  
6 ABOUT THE FACT THAT WE TIMELY SERVED A DEMAND FOR EXPERTS, WE  
7 TIMELY SERVED A DEMAND, WE TIMELY SERVED AN IDENTIFICATION OF  
8 EXPERT AND YOU UN NAMELY [SEFPBD] A DEMAND FOR THE DEPOSITION  
9 AND I OBJECTED, WE NEGOTIATED IN FRONT OF COURT WHAT I MIGHT  
10 GET FROM YOU IF I LET YOU -- IF I LET COUNSEL DEPOSE HIM EVEN  
11 THOUGH IT WAS UNTIMELY AND WE COULDN'T COME TO THE AGREEMENT  
12 ABOUT SOME DOCUMENTS THAT I WANTED SO THEN YOU KNOW WE WERE  
13 AT A STANDSTILL AND DIDN'T -- YOU WEREN'T ABLE TO DEPOSE HIM  
14 BUT THE OPINION THAT THIS EXPERTS GOING TO RENDER IS GOING TO  
15 BE EXACTLY THE OPINION FROM 2007 FROM KEVIN WASH BURN, IT'S  
16 JUST LIKE KEVIN WASH BURN ISN'T AVAILABLE ANY MORE SO WE  
17 IDENTIFIED A NEW EXPERT BUT ALL OF THAT WAS DONE TEAM LEE  
18 PURSUANT TO THE RULES OF COURT. THE ONLY THING THAT WAS DONE  
19 UN TAME LEE WAS THE NOTICE OF DEPO AND I WOULD HAVE AGREED TO  
20 LET YOU DEPOSE IF YOU HAD HAD SOME SORT OF AGREEMENT ON YOUR  
21 PART OF OTHER DOCUMENTS THAT WOULD HAVE BEEN USEFUL IN THIS  
22 LITIGATION AND THAT'S THE WAY IT WENT.

23 MR. STEIN: AND [WURPB] [R\*] YOUR HONOR WE SAID AT  
24 THE TIME WAS THE REASON FOR THE DEPOSITION IS SO WE WOULDN'T  
25 HAVE TO STOP EVERYTHING AND IS THERE A 402 HEARING BECAUSE OF  
26 PREJUDICE UNDER 352 FOR THIS EXPERT SAYING IF THEY WERE A  
27 FEDERALLY RECOGNIZED TRIBE THEN THIS MIGHT APPLY WHEN THIS  
28 FACT THEY HAVE ALREADY ADMITTED IN THE FIRST PART OF TRIAL

1 THAT THEY'RE HAD NOT ONLY NOT FEDERALLY RECOGNIZED BULL HERE  
2 WE ARE 120 10 YEARS AFTER THE SMDC AGREEMENT ENDED AND THEY  
3 HAVEN'T [AOEPBT] PUT IN AN APPLICATION FOR FEDERAL  
4 RECOGNITION SO WE NOW ARE STRETCHING THE POINT OF RELEVANCY  
5 WHILE IN FACT CREATING A GREAT DEAL OF PREJUDICE.

6 THE COURT: WELL I THINK WE DISCUSSED WHY NO FEDERAL  
7 RECOGNITION FOR 10 YEARS AND DIDN'T SHE SAY THEY DIDN'T HAVE  
8 A LOT OF RECORDS THEY NEEDED, I'M NOT SURE THAT CARRIES THE  
9 DAY, 10 YEARS LATER AND SAYING THEY HAVEN'T APPLIED FOR  
10 FEDERAL RECOGNITION.

11 MR. STEIN: WELL NO IF THEY ARE SAYING THAT SOMEHOW  
12 THE SMDC AGREEMENT VIOLATED A REQUIREMENT ON A FEDERALLY  
13 RECOGNIZED TRIBE AND 10 YEARS [AFRT] FACT THEY HAVEN'T EVEN  
14 BEGUN AN APPLICATION PROCESS TO BEGIN FEDERAL RECOGNITION, I  
15 BELIEVE THE COURT CAN USE THAT TO SAY OKAY 352 WHAT IS THE  
16 RELEVANCE HERE WHEN IT'S 10 YEARS AFTER THE SMDC AGREEMENT  
17 ENDED AND THEY HAVEN'T EVEN APPLIED AND AN EXPERT SAYING IF  
18 IN FACT YOU WERE A FEDERALLY RECOGNIZED TRIBE THEN DAH, DAH,  
19 DAH DAH, DAH.

20 THE COURT: WELL THE OBJECT OF THE AGREEMENT WAS TO  
21 [TKETD] FEDERAL RECOGNITION AND THEN GAMING THEN PURCHASE  
22 ASSUME YOU WOULD PURSUIT FEDERAL RECOGNITION FIRST SO YOU  
23 COULD GET THE GAMING ISN'T THAT A RATIONAL INTERPRETATION OF  
24 THE AGREEMENT.

25 MR. STEIN: IT AIN'T WHAT HAPPENED, YOUR HONOR, AND  
26 THE REASON IT DIDN'T HAPPEN IS BECAUSE THE FEDERAL  
27 RECOGNITION PROCESS WAS SO BROKEN AND WE DID PURSUE IT  
28 THROUGH LEGISLATION, IT WAS SO BROKEN THAT WE ABORTED IT.

1 THE DIOGUENOS PURSUED IT AND THEY ARE NOW AS A RESULT ARE NOT  
2 FEDERALLY RECOGNIZED. THOSE ARE THE GUYS IN ORANGE COUNTY,  
3 DIOGUENOS ARE FROM SAN JUAN CAPISTRANO. MEANWHILE THEY'RE  
4 SAYING THEY KNEW ANY OF THIS THEY KNEW ALL OF IT, THEY KNEW  
5 ALL OF IT, DAN CRANE WAS THERE TO PURSUE FEDERAL RECOGNITION  
6 SO THE IDEA THAT SOMEHOW THIS FICTION HAS A BOTTOM, IT  
7 DOESN'T FICTION AGAIN HAD THEY APPLIED SOMETIME IN THE 10  
8 YEARS SINCE THE SMDC AGREEMENT ENDED THEY MIGHT HAVE A  
9 RATIONAL NOR SAYING THIS WAS RELEVANT BUT WHEN YOU BRING IN  
10 PREJUDICIAL STUFF HIKE THIS FOR THE PURPOSES OF SHOWING  
11 CREDIBILITY SUBMIT PASS AMOUNT OF 10 YEARS WITHOUT AN  
12 APPLICATION, WE HAVE AT BENEFIT OF THAT TESTIMONY, THIS  
13 CLEARLY CALLS FOR A 402 TO EVALUATE THE QUESTION OF 352.

14 MS. IBARRA: YOUR HONOR, THE KEY POINT IS WHAT THE  
15 COURT HAS MENTIONED THE TRIBE DID NOT HAVE RECORDS, AND  
16 SECONDLY THAT THAT LITIGATION WASN'T HANG NOT OVER THEM AND  
17 THERE WASN'T ANY CLARITY [TAOE] AS TO WHO HAD A RIGHT TO USE  
18 THE NAME AND THE RECORDS AND THE MEMBERSHIPS OF PEOPLE WHO  
19 WOULD FORM THE BASIS FOR FEDERAL RECOGNITION, THIS IS WHAT  
20 THE TRIBE HAS ALWAYS SAID, THEY NEED TODAY PURSUE THIS FOR 10  
21 YEARS BECAUSE THEY NEEDED TO GET THOSE RECORDS BACK, THEY  
22 COULDN'T PURSUE FEDERAL RECOGNITION WITHOUT THOSE RECORDS SO  
23 THIS IS WHAT THIS LITIGATION IS ABOUT. ONCE YOU KNOW ONCE  
24 THIS IS OVER THEN THEY CAN HAVE FOR EXAMPLE ALL -- IF THE  
25 JURY AGREES AND THEN THEY CAN PURSUE THAT BUT WITHOUT IT THEY  
26 CAN'T AND THEY'VE NEVER MET CRANE, NONE OF THE TRIBAL COUNCIL  
27 PRIOR OR PRESENT HAS EVER MET MR. CRANE.

28 MR. STEIN: YOUR HONOR.

1 THE COURT: UH-HUH.

2 MR. STEIN: IS THIS LITIGATION IN FACT ABOUT THE  
3 RECORDS BECAUSE IF THAT'S THE CASE I WOULD LIKE A NONSUIT  
4 BECAUSE WE HAD SHOWN THAT THE RECORDS WERE TAKEN NOT BY SMDC  
5 THEY WERE TAKEN [TKEUPT] LOS ANGELES COUNTY SHERIFF'S, THERE  
6 IS NO CONVERSION IF A PUBLIC -- IF THE SHERIFF TAKES THE  
7 RECORDS.

8 THE COURT: WASN'T THAT DONE AT YOUR BEHEST.

9 MS. IBARRA: NO THAT WAS -- YES THAT WAS DONE AT MR.  
10 STEIN'S BEHEST.

11 MR. STEIN: YEAH ONCE AGAIN THERE WAS NO CONVERSION  
12 IN THIS CASE.

13 MS. IBARRA: I DON'T THINK.

14 MR. STEIN: IT'S DONE [PWAOUZ] OF A COURT ORDER, I  
15 DO NOT ISSUE A WRIT OF ATTACHMENT.

16 THE COURT: I UNDERSTAND BUT IT WAS DONE AT YOUR  
17 ABOUT [HAEFT].

18 MS. IBARRA: HER HONOR THAT'S NOT ENTIRE EYE TRUE AS  
19 WE HAVE STATED THE ORIGINAL DOCUMENT STAYED IN THE POSSESSION  
20 OF THE LAW OFFICES OF JONATHAN STEIN THAT ONE WAY THEY LEFT  
21 AND NEVER CAME BACK AND [WHAOEF] HAD [TEPLD] THAT THEY  
22 REQUESTED THEM BACK H THEY HIRED SHEPPARD MULLIN FOR THAT  
23 REASON TO HELP THEM IN THAT LITIGATION AND TO SPECIFICALLY  
24 GET THOSE RECORD BACK, WHILE SHEPPARD MULLIN WAS REPRESENTING  
25 THEM A WRIT OF ATTACHMENT AIM CAME IN THESE ARE ADDITIONAL  
26 RECORDS.

27 THE COURT: THESE WERE THE ONE SHE WAS TRYING TO  
28 RECREATE; RIGHT?

1 MS. IBARRA: RIGHT, THE ONES THAT WERE RECREATED.  
2 SO THERE WAS AN ADDITIONAL BIT, BUT NOTHING -- I THINK THIS  
3 IS A SPECIES OF AN ARGUMENT ABOUT PRIVILEGE, THAT IT HAPPENED  
4 PURSUANT TO LITIGATION.

5 MR. STEIN: THERE WAS NOT.

6 MS. IBARRA: NOTHING COVERS THE ARGUMENT ABOUT THE  
7 DOCUMENTS THAT STAYED IN HIS POSSESSION AND THAT WERE NEVER  
8 RETURNED EVEN AFTER SHEPPARD MULLIN REQUESTED THEM. THOSE  
9 AREN'T COVERED BY THAT.

10 MR. STEIN: YOUR HONOR THEY ARE, THOSE EXACT RECORDS  
11 ARE.

12 THE COURT: SO THE WHAT IS THIS ARGUMENT GOING TO,  
13 WHAT IS THE --.

14 MR. STEIN: WE WOULD LIKE, IF THIS LITIGATION IS IN  
15 FACT ABOUT THE RECORDS, WE WOULD LOOK A NONSUIT, THERE'S NO  
16 CONVERSION IT IS IMPOSSIBLE TO MAINTAIN APE CONVERSION ACTION  
17 IF YOU ARE COMPLAINING ABOUT THE ACTIONS OF A [SHAEFRB]  
18 PURSUANT TO A COURT ORDER.

19 THE COURT: I HAVE NOTHING IN WRITING, I HAVEN'T  
20 HEARD ANY EVIDENCE, SO THE NONSUIT IS PREMATURE, THE EARLIEST  
21 YOU CAN MAKE A NONSUIT IS AFTER OPENING STATEMENT, YOU CAN  
22 MAKE ANOTHER MONTH MOTION FOR NONSUIT AFTER PLAINTIFFS CASE  
23 SO THERE'S NO EVIDENCE UPON WHICH I CAN EVALUATE A NONSUIT  
24 MOTION BUT MAYBE IT'S COME, I DON'T KNOW.

25 MR. STEIN: WE ALSO FORGOT TO MENTION KEN SULZER  
26 WILL BE A WITNESS.

27 THE COURT: ALL RIGHT WHAT IS YOUR TIME ESTIMATE FOR  
28 THIS PORTION.

1 MS. IBARRA: FOR MY -- FOR OUR -- FOR THIS PORTION I  
2 THINK THAT WE CAN BE FINISHED BY MONDAY BUT -- AND I THINK IT  
3 [TPHAO\*ETS] NEEDS TO BE BY MONDAY BECAUSE OUR EXPERT FROM  
4 SOUTH DAKOTA NEEDS TO TRAVEL HERE.

5 THE COURT: WELL THEN WE MIGHT HAVE TAKE HIM OUT OF  
6 ORDER BUT I DOUBT IT'S GOING TO BE DONE IN A WEEK.

7 MS. IBARRA: WELL FOR OUR SIDE OF THE CASE IS WHAT  
8 I'M THINKING.

9 THE COURT: I THINK YOU'RE UNDERESTIMATING. YOU'RE  
10 SAYING FOR [AUR] CASE IN CHIEF.

11 MS. IBARRA: YES FOR ANY CASE [TKPH] CHIEF I THINK  
12 WE'VE ALREADY HEARD A LOT OF THIS TESTIMONY.

13 THE COURT: WELL ONE WEEK, COURT DAYS IS WHAT.

14 MS. IBARRA: SO THAT'S FIVE.

15 THE COURT: FIVE COURT DAYS, WHAT IS IT NELLI.

16 THE CLERK: FOUR; FOUR DAYS.

17 THE COURT: YEAH YOU'RE NOT GOING TO DO IT IN FOUR  
18 COURT DAYS, NOT WITH EIGHT WITNESSES, 26 WHICH ARE EXPERTS, I  
19 THINK YOU'RE UNDERESTIMATING.

20 MS. IBARRA: OKAY.

21 THE COURT: SO WITH YOUR CASE, HOW LONG IS YOURS.

22 MR. STEIN: WELL AS YOU KNOW WE HAVE TWO -- WE HAVE  
23 THREE [KAEURS] [-Z], WE HAVE THE CROSS-COMPLAINT OF THE CRANE  
24 GROUP, WE HAVE THE [KROG] [SPRAOEUPBG] TORT SMDC FOR THE  
25 \$2,000,000.

26 THE COURT: THAT'S ALL PART OF THE BREACH OF  
27 CONTRACT ISN'T IT, THEY'RE SAYING YOU BREACHED YOU'RE SAYING  
28 YOU OWE US UNDER THE CONTRACT.

1 MR. STEIN: YEAH [PWA\*U] BUT WE'RE NOT SAYING THAT  
2 AS PART OF THE DEFENSE THAWS OUR AFFIRMATIVE CASE.

3 THE COURT: RIGHT BUFF IT'S ALL PART OF THE  
4 CONTRACT.

5 MR. STEIN: RIGHT BUFF WE DO GET A RIGHT OF [R\*BL]  
6 BECAUSE THEY'RE CROSS-COMPLAINT WE HAVE A [ROEUT] OF  
7 REBUTTAL.

8 THE COURT: LIMITED TO THAT, YES WE'RE NOT TALKING  
9 ABOUT REBUTTAL RIGHT NOW BUT YES.

10 MR. STEIN: SO I JUST WANT TO KIND OF POINT OUT THAT  
11 THEY'VE GOT THREE.

12 THE COURT: I'M TRYING TO FIGURE OUT HOW LONG, IF  
13 YOU COULD KIND OF ANSWER THAT QUESTION, HOW LONG IS YOUR  
14 PORTION OF THE CASE GOING TO TAKE.

15 MR. STEIN: SEVEN COURT DAYS.

16 THE COURT: SEVEN COURT DAYS.

17 MR. STEIN: THAT'S RIGHT, PUT ON TWO CASES IN CHIEF  
18 AND TO RESPOND TO THEIR CASE IN CHIEF.

19 THE COURT: YOU TOO HAVE EIGHT AND ONE EXPERT.

20 MR. STEIN: RIGHT.

21 THE COURT: MAYBE SEVEN DAYS, I'M THINKING NOR FIVE  
22 BUT POSSIBLY SEVEN. SO IT'S PROBABLY ANOTHER TWO WEEKS  
23 PROBABLY, MAYBE. OKAY TWO WEEKS THEN, ONE WEEK EACH.

24 MS. IBARRA: I THINK SO.

25 THE COURT: AND IF YOU GET IT DONE EARLY, YOU STILL  
26 HAVE TO DO YOUR DEFENSE IN A WEEK.

27 MR. STEIN: SO LET ME UNDER WHAT THE COURT JUST  
28 SAID.



1 THE COURT: TWO WEEKS.

2 MS. IBARRA: SO EACH SIDE HAS FIVE COURT DAYS.

3 THE COURT: FIVE COURT DAYS.

4 MR. STEIN: FOR THE CASE IN CHIEF.

5 THE COURT: NO FOR THE ENTIRE -- FOR THIS ENTIRE  
6 PORTION OF THE CASE, BEGINNING TO END FOR THE EVIDENCE,  
7 DOESN'T INCLUDE DELIBERATION. WELL HAVE YOU PREPARED JURY  
8 INSTRUCTIONS FOR THIS PART OF THE TRIAL.

9 MS. IBARRA: WE EACH SUBMITTED SEPARATE BINDERS WITH  
10 THEM.

11 MR. STEIN: THERE WAS NO AGREEMENT ON THE JURY  
12 INSTRUCTION AND WE'VE HAD NO DISCUSSION OF IT SO FOR ONE  
13 THING I WOULD HUGELY DISAGREE WITH THE JURY INSTRUCTIONS ON  
14 THE ATTORNEY-CLIENT RELATIONSHIP, THEY HAVE [THO\*] NO  
15 RELATION TO CALIFORNIA LAW.

16 MS. IBARRA: I DISAGREE WITH THAT.

17 THE COURT: WELL WE'RE GOING TO HAVE TO TALK ABOUT  
18 SPECIFIC INSTRUCTION WHICH I THEY THINK WE ALREADY DID.

19 MR. STEIN: NO WE DIDN'T.

20 THE COURT: DIDN'T WE TALK ABOUT INSTRUCTIONS  
21 ALREADY.

22 MR. STEIN: NO WE GOT TO OUR GENERAL INSTRUCTIONS,  
23 OPENING AND CLOSING, AND WE GOT THROUGH THE TWO JURY  
24 INSTRUCTIONS THAT WERE HOTLY CONTESTED REGARDING STANDING AND  
25 CAPACITY TO SUE.

26 THE COURT: NO I MEANT AT THE FSC.

27 MS. IBARRA: WE DID NOT.

28 THE COURT: WE DID NOT.

1 MR. STEIN: WE DID NOT, WE GOT TO THE POINT WHERE  
2 THE COURT SAID YOU HAVE A LIST OF WHAT'S AGREED, WHAT'S NOT  
3 AGREED, THAT WAS THE FIRST ONE, WE BROUGHT THAT IN, THE  
4 SECOND ONE, AND WE GOTTEN TIRE [AOE] CUTE UP IN SIMPLY  
5 GETTING TO THE POINT OF OPENING, CLOSE [SKP-G] THE TWO  
6 CONTESTED IDEAS OF STANDING AND CAPACITY TO SUE.

7 THE COURT: THEN WE SHOULD HAVE A DISCUSSION ABOUT  
8 THOSE JURY INSTRUCTIONS THEN. WELL DID YOU DEPOSE THEY THEM,  
9 WE CAN SEND THE JURY HOME NOW WE CAN TALK ABOUT THEM NOW.

10 MS. IBARRA: WE HAVE THEM.

11 THE COURT: WE CAN LOOK AT THEM. WHY DON'T YOU SEND  
12 I JURY HOME HAVE THEM COME BACK TOMORROW AT WHAT TIME.

13 THE CLERK: 10.

14 THE COURT: 10, THEY LIKE TO COME BACK AT 10. BY  
15 THE WAY -- BY THE WAY MR. STEIN I SAID WE WOULD CONTINUE OUR  
16 SANCTION HEARING UNTIL TODAY SO I WAS GOING TO SAY I THOUGHT  
17 THAT YOUR BEHAVIOR HAS BEEN MUCH BETTER SINCE OUR LAST  
18 DISCUSSION, YOU'VE BEEN RIGHT ON POINT SO I DON'T FEEL  
19 THERE'S [TPHO\*EU] ANY NEED TO IMPOSE SANCTIONS, I THINK YOU  
20 TOOK MY ADMONITION SERIOUSLY AS I HAD HOPED AND I THINK I  
21 HAVE FAITH THAT YOU'LL CONTINUE FOR THE REST OF THE TRIAL IN  
22 THAT MANNER, I DON'T THINK I HAVE NEED ANY -- I DON'T THINK I  
23 EVEN NEED AN EXPLANATION FROM YOU I THINK YOUR BEHAVIOR HAS  
24 SAID IT ALL.

25 MR. STEIN: THANK YOU YOUR HONOR.

26 THE COURT: ALL RIGHT SO LET'S TALK ABOUT THE JURY  
27 INSTRUCTION [-S]. FRANKLY I DON'T REMEMBER EXACTLY WHAT IT  
28 WAS THAT YOU SAID OR THAT YOU PROPOSED.

1 MR. STEIN: YEAH THE PROBLEM WE'RE HAVING IS WE  
2 FIRST NEED TO SEE THE LAST SAID OF PROPOSALS, I'M HAVING  
3 TROUBLE FINDING THEM SO WE'LL BEG THE COURT'S PATIENCE I  
4 THINK 15 MINUTES MIGHT BE HELPFUL.

5 THE COURT: ALL RIGHT I'M LOOKING TOO. ORANGE  
6 HEARSAY SOME BREACH OF CONTRACT.

7 THE COURT: [\*FP].

8 MR. FORDYCE: YOUR HONOR THERE SHOULD BE A BEST OF  
9 MY RECOLLECTION CHUNK IN OUR BINDER OF JURY INSTRUCTIONS.

10 THE COURT: YEAH I SEE THEM IT SAYS G, TAB G.

11 MR. FORDYCE: COULD BE AND SEPARATED BY A BLUE PIECE  
12 OF PAPER FOR EACH INSTRUCTION.

13 THE COURT: YES I DO SEE THAT, THERE'S CONTRACT  
14 INTERPRETATION INSTRUCTIONS.

15 MR. FORDYCE: THAT SOUNDS VERY FAMILIAR.

16 THE COURT: IS THERE A COMMON COUNT, IS THAT THE  
17 CROSS-COMPLAINT.

18 MS. IBARRA: YEAH FOR MR. STEIN AND MR. CRANE BOTH  
19 HAVE A COMMON COUNT OF ACCOUNT STATED. .

20 THE COURT: AND I'M WONDERING IF YOU HAD VERDICT  
21 FORMS FOR THIS PHASE OF THE TRIAL, I'LL BET WE DIDN'T ADDRESS  
22 THAT.

23 MR. FORDYCE: IF WE DID YOUR HONOR THEY WOULD BE AT  
24 THE END OF EACH SECTION SO RIGHT BEFORE A BLUE PAGE THAT'S  
25 DEFINITELY WHERE WE PUT THE VERDICT FORM.

26 MR. STEIN: SO I HAVE ONE SET BREACH OF CONTRACT FOR  
27 CRANE, ONE SET BREACH OF CONTRACT FOR SMDC, WE HAVE A SET FOR  
28 LIBRA DAMAGES, THAT INCLUDES AFFIRMATIVE DEFENSES, THEN WE

1 HAVE A SET FOR FORMATION OF ATTORNEY-CLIENT RELATIONSHIP, A  
2 SET FOR BREACH OF FIDUCIARY DUTY AND CONVERSION.

3 MR. FORDYCE: AND YOUR HONOR SEVEN HAS A PRO  
4 IMPACTS-D VERDICT FORM THAT'S BREACH OF FIDUCIARY DUTY, SO  
5 DOES SECTION 8 WHICH IS CONVERSION, SECTION 6 WHICH IS  
6 FORMATION OF ATTORNEY-CLIENT RELATIONSHIP ALSO HAS  
7 MULTIPLE --.

8 THE COURT: WELL THIS IS WHAT I'M GOING TO -- WHAT I  
9 AM CONSIDERING MAYBE BECAUSE THERE ARE SO MANY CAUSES OF  
10 ACTION, PERHAPS IT SHOULD BE A GENERAL VERDICT FORM FOR EACH  
11 CAUSE OF ACTION. SO THE COMPLAINT -- THE FOURTH AMENDED  
12 COMPLAINT HAS 15 CAUSES OF ACTION SO THE WAY I'M ENVISIONING  
13 THE VERDICT FORM TO READ IS WE THE JURY IN THE ABOVE ENTITLED  
14 ACTION SUBMITTED QUESTIONS SUBMITTED TO YOU AS FOLLOWS, FIRST  
15 CAUSE OF ACTION WE FIND IN FAVOR OF THE PLAINTIFF YES NO, OR  
16 WE FIND IN FAVOR OF THE DEFENDANT YES NO, SOMETHING LIKE THAT  
17 OR WE FIND IN FAVOR OF PLAINTIFF CHECK THE BOX OR DEFENDANT  
18 CHECK THE BOX, SOMETHING VERY SIMPLE SO THEY WOULD HAVE 15  
19 QUESTIONS.

20 MR. STEIN: WHAT ABOUT THE AFFIRMATIVE DEFENSES.

21 THE COURT: WE CAN ASK THEM ABOUT THAT TOO ALTHOUGH  
22 I GUESS THEY WOULD HAVE TO CONSIDER THAT INTO WHETHER THEY  
23 FIND FOR PLAINTIFF OR DEFENDANT. YOU ARGUE YOUR FIRM  
24 DEFENDANT AND IF THEY SAID YOUR FIRM DEFENDANT THEY WOULD  
25 FIND FOR YOU ON THAT CLAIM, CORRECT? IN OTHER WORDS IF  
26 CONVERSION SAYS WE FIND IN FAVOR OF PLAINTIFF PLAINTIFF OR  
27 DEFENDANT CHECK DEFENDANT IN THEY ACCEPTED [TPOUR] FIRM  
28 DEFENDANT AND FOUND FOR YOU THEY WOULD CHECK DEFENDANT SO I'M

1 NOT SURE YOU REALLY NEED TO HAVE A FINDING ON AFFIRMATIVE  
2 DEFENSE, I THINK IT'S SUBSUMED UNDER THAT WHICH IS ALSO ONE  
3 OF THE REASONS HE WHY I THINK A GENERAL VERDICT FORM WOULD  
4 BE -- IT'S A IT'S NOT A PURE GENERAL VERDICT FORM WE FIND FOR  
5 PLAINTIFF WE FIND FOR DEFENDANT, IT'S A GENERAL CLAIM SO THEY  
6 COULD FIND ON CONVERSION BUT NOT FOR SOME OTHER CAUSE OF  
7 ACTION.

8 MR. STEIN: BUT WE WOULD ALSO NEED A VERDICT FORM  
9 FOR SMDC CASE IN CHIEF AND THE CRANE GROUP CASE IN CHIEF.

10 THE COURT: YES. I AGREE WITH THAT. IT WOULD READ  
11 THE SAME WAY, SO WE WOULD HAVE THREE VERDICT FORMS, I GUESS.  
12 ARE THERE TWO CROSS COMPLAINTS, IS THAT IT?

13 MR. STEIN: YES THAT'S EXACTLY RIGHT, I MEAN GOING  
14 BACK TO PRINCIPALS, AND FORGIVE ME THE COURT IS MORE FAMILIAR  
15 WITH HOW THIS STUFF WORKS THAN I AM, YOU'VE GOT CONSOLIDATED  
16 CASES SO WE HAVE THE CASE WHICH IS THE SMDC CASE FILED  
17 AGAINST THESE PEOPLE WE'RE FINALLY GOING TO TRIAL SO WE WOULD  
18 WAN A FINAL VERDICT FORM FOR THE SMDC COMPLAINT AND THEN WE  
19 WOULD WANT A SEPARATE VERDICT FORM FOR THE CRANE COMPLAINT  
20 AND THEN WHAT'S GOING TO HAPPEN I THINK THE COURT IS GOING TO  
21 FIND IS IF THEY HAVE -- THEY'VE GOT TO SHOW DAMAGES AND I  
22 DON'T THINK YOU'RE GOING TO FIND ANY SHOWING OF DAMAGES  
23 WHATSOEVER SO YOU'RE GOING TO HAVE SMDC'S OWED \$2,000,000 AND  
24 THE CRANE IS GOING TO BE OWED \$400,000 AND THEY'RE GOING TO  
25 SAY WELL WE HAVE DAMAGES OF \$100,000 AND SO WE'RE GOING TO  
26 HAVE TO OFFSET THOSE AMOUNTS AND QUITE FRANKLY, I HAVE WANT  
27 TO MAKE SURE THAT WE HAVE WHAT IS NEEDED TO SHOW THAT CRANE  
28 GETS DAMAGES AND SMDC GETS DAMAGES. IF THEY HAVE AN

1 AFFIRMATIVE DEFENSE TO THE SMDC AGREEMENT SMDC COMPLAINT  
2 THEY'RE GOING TO HAVE TO STATE IT, BUT I DON'T THINK THEY  
3 STATED IT IN THEIR AFFIRMATIVE DEFENSES IN THEIR ANSWERS.

4 MS. IBARRA: TO THE SMDC COMPLAIN, WE DID INCLUDING  
5 THE ANTICIPATORY BREACH BUT THERE ARE OTHERS.

6 THE COURT: I ANY YOU'RE RIGHT TOE SEPARATE VERDICT  
7 FORMS, CROSS COMPLAINTS SHOULD HAVE SEPARATE VERDICT FORM AND  
8 SEPARATE CONSIDERATION AND I THINK THAT'S THE BEST WAY TO DO.  
9 THERE'S A LINE AT THE BOTTOM THAT SAYS HOW MUCH ARE YOUR DAMS  
10 AND IF THERE'S AN OFFSET THAT CAN BE DONE POST TRIAL I DON'T  
11 THINK WE SHOULD BE TELLING THEM TO DO THE MATH, I THINK  
12 THAT'S EXACTLY MR. STEIN'S POINT IS LET'S HAVE THEM MAKE A  
13 FINDING AS TO WHAT'S OWED AFTER THAT AND IF THERE'S OFFSET  
14 THAT CAN BE DONE AFTERWARDS I THINK THAT'S CLEANER.

15 MS. IBARRA: AND I THINK THAT'S USUALLY DONE BY THE  
16 COURT; RIGHT?

17 THE COURT: RIGHT, IT'S A MATHEMATICAL CALCULATION.

18 MR. STEIN: YOUR HONOR, HOW DO WE HANDLE PREJUDGMENT  
19 INTEREST? DOES THE JURY CALCULATE THE INTEREST OR THE COURT?

20 THE COURT: NO I THINK THE COURT DOES THAT.

21 MR. STEIN: THE CONTRACT -- EACH CONTRACT HAS AN  
22 INTEREST PROVISION IN IT, YES BUT YOU ALSO HAVE THIS FACT  
23 THAT THERE WAS THIS LONG PERIOD DURING THE CONTRACT WHEN  
24 THERE WAS NO PAYMENT UNDER THE CONTRACT SO YOU HAD ONE TYPE  
25 OF -- YOU HAD INTEREST OF THE CONTRACT DUE THROUGH THE DATE  
26 OF TERMINATION AND THROUGH AS SET OF DEMANDS, CREPE HAS A SET  
27 OF DEMANDS SIMILAR TO THE SMDC DEMAND AND THEN SEPARATELY YOU  
28 HAVE A SET OF PREJUDGMENT INTEREST FROM THE ACCOUNT STATED

1 UNTIL THE DATE OF TRIAL SO WHAT YOU'RE GOING TO END UP WITH  
2 YOU'RE GOING TO END UP WITH WHAT, 10 YEARS OF INTEREST AT 10  
3 PERCENT.

4 THE COURT: AT THE LEGAL RATE.

5 MR. STEIN: WELL CONTRACTUAL RATE IS 10 PERCENT.

6 THE COURT: SO ANYTHING NOT COVERED BY THE CONTRACT  
7 WOULD BE THE LEGAL RATE SO I DON'T KNOW WHAT THE CONTRACT  
8 SAYS IN TERMS OF INTEREST BUT THE CALCULATION -- THE  
9 CALCULATION FROM EITHER THE FILING OF THE COMPLAINT OR THE  
10 TERMINATION OF THE CONTRACT UNTIL JUDGMENT IS SOMETHING THE  
11 COURT DOES.

12 MR. STEIN: YEAH VERY GOOD AND --.

13 THE COURT: BUT IN TERMS OF HOW MUCH IS OWED UP  
14 UNTIL THE BREACH I SUPPOSE, I BELIEVE THAT WOULD BE THE JURY.  
15 I DON'T KNOW WE SHOULD DO SOME RESEARCH ON THAT.

16 MS. IBARRA: YEAH MAYBE WE SHOULD.

17 MR. STEIN: I THINK [WURPBS] AGAIN IT'S THE -- WE  
18 HAVE ACCOUNT STATED THAT THAT INCLUDES THOSE INTEREST  
19 CALCULATIONS SO I THINK THAT THE JURY CAN FIND THAT, I JUST  
20 WANT TO MAKE SURE THAT IT'S NOT TAKEN AWAY FROM THEM ON THE  
21 THEORY THAT THE COURT DOES IT, I THINK THE COURT WOULD DO IT  
22 AFTER THE ACCOUNT STATED IN WRITING AND THEN FROM THAT WE  
23 WOULD ARGUE TO THE COURT WHAT THE RIGHT DATES ARE.

24 THE COURT: WELL THE AMOUNTS THAT YOU ALLEGE -- DID  
25 YOU [ABLG] AN AMOUNT IN THE COMPLAINT WHICH INCLUDED INTEREST  
26 OR DID YOU JUST SAY -- WHAT DID YOU SAY.

27 MR. STEIN: YEAH WE SAID -- WE SAID -- WE SAID IT  
28 TWICE, WE SAID THIS AMOUNT -- THIS AMOUNT OF FEES, THIS

1 AMOUNT OF REIMBURSABLE [TKOFT], THIS AMOUNT OF INTEREST BASED  
2 ON THE ACCOUNT STATED AS WELL AS THE CONTRACTUAL CALCULATION  
3 AND THEN WE ALSO SAID IN THE PRAYER PLUS RE JUDGMENT INTEREST  
4 THAT WOULD GO FROM BASICALLY NOVEMBER 2006 TO THE PRESENT.

5 THE COURT: [KWRAOF] I DON'T THINK THEY DO THAT  
6 CALCULATION, I THINK WE DO -- BECAUSE [SWHAPZ] JUDGMENT ISN'T  
7 ENTER -- UNTIL THE DAY THE JUDGMENT WAS ENTER, I SIGN THE  
8 JUDGMENT, YOUR MONEY STILL KEEPS ACCRUING SO EVEN AFTER THE  
9 JURY'S BEEN DISCHARGED, UNTIL THE JUDGMENT IS ENTERED, YOUR  
10 INTEREST IS STILL ACCRUING WHICH IS WHY I I SAID THE CLERK  
11 USUALLY DOING THAT, SO I THINK THERE IS SOME CLEAR SEPARATION  
12 THERE I JUST CAN'T RECALL, WHICH PART THE JURY FINDS AND  
13 WHICH PART WE CALCULATE.

14 MR. STEIN: RIGHT. AND YOUR HONOR TOWARDS THAT END,  
15 I DON'T KNOW IF IT'S USEFUL FOR NOT BUT I MEAN YOU'RE GOING  
16 TO END UP WITH LIKE \$5,000,000 OF DAMAGES ON THE PART OF SMDC  
17 AND CRANE AND WE'VE ALREADY SEEN A CASE FOR TWO [WROEBGZ],  
18 IT'S KIND OF HARD TO SEE WHAT THEIR DAMAGES MIGHT BE, I'D BE  
19 VERY MUCH IN FAVOR OF SOME SORT OF SETTLEMENT CONFERENCE IN  
20 FRONT OF SOMEBODY THAT MIGHT BE AVAILABLE, I'VE TRIED TO SET  
21 UP THE MECHANICS PRE PET LADDER HE I'VE HAD A GREAT DEAL OF  
22 COOPERATION FROM COUNSEL, I DON'T KNOW IF WE'VE MADE MUCH  
23 PROGRESS WITH THE COUNCIL BUT I KNOW COUNSEL HAS BEEN VERY  
24 COOPERATIVE IN SETTING UP THE MECHANICS BUT IT SEEMS TO ME  
25 THAT IN LIGHT OF FACT THAT WE'RE ACTUALLY HERE NOW, IN OTHER  
26 WORDS WE ARE HERE NOW AND THEY'RE LOOKING DOWN, YOU ARE KNOW  
27 THE LOOKING DOWN THE MUZZLE OF A \$5,000,000 GUN THE QUESTION  
28 IS ARE WE REALLY GOING TO SPEND ALL OF THIS EFFORT SO THEY



1 CAN SHOW \$100,000 WORTH OF THE DAMAGES SO SHOW THAT THEY CAN  
2 SOMEHOW WHEEZE [-L] OUT OF STUFF.

3 MS. IBARRA: YOUR HONOR.

4 MR. STEIN: OF STUFF THAT ACCRUED IN 2006.

5 MS. IBARRA: [URB] HE'S FREE TO MAKE AN OFFER, I  
6 DON'T UNDERSTAND WHY.

7 MR. STEIN: A DOZEN AND WE'VE NEVER BEEN GIVEN A  
8 COUNTER OFFER OR EVEN A RESPONSE TO THE COVER [STPHAOT]  
9 OFFICER WAS SMDC THEY CAN HAVE SMDC AND THAT WASN'T A SERIOUS  
10 EVER.

11 MR. STEIN: NO, FALSE.

12 MS. IBARRA: THAT WASN'T A SERIOUS OFFER, YOU KNOW I  
13 DON'T KNOW WHAT [TOELS] SAY.

14 MR. FORDYCE: YOUR HONOR THAT'S NOT QUITE ACCURATE,  
15 I'VE HAD A NUMBER OF DISCUSSIONS WITH COUNSEL AND SHE'S BEEN  
16 VERY [SKP-LG] ACCOMMODATING I THINK THERE ARE OTHER FACTORS  
17 THAT ARE STANDING IN HER WAY AND THAT'S FINE BUT WE'RE NOT  
18 TALKING ABOUT A SERIES OF YOU KNOW WHAT IS MR. STEIN GOING TO  
19 OFFER IN A DOLLAR AMOUNT WHAT WE'RE SAYING IS IS THERE A GOOD  
20 REFEREE THAT THE PARTIES ARE WILLING TO WORK WITH NOW AT THIS  
21 POINT WITH WHERE WE ARE, NOT GIVE US ANOTHER OFFER, THAT'S  
22 MEANINGLESS, THAT'S [WHAPB] WE'RE ASKING FOR TO BE HONEST.

23 MS. IBARRA: AFTER 10 YEARS YOUR HONOR I JUST DON'T  
24 KNOW WHAT ELSE TO DO, IT'S JUST -- WE'RE HERE SHALL IT'S --.

25 THE COURT: WELL WHY WASN'T THIS DONE EARLIER IS MY  
26 QUESTION.

27 MS. IBARRA: IT'S BEEN DONE EARLIER.

28 MR. STEIN: WE HAVE REPEATEDLY AND REPEATEDLY AND

1 REPEATEDLY SOUGHT ANY SORT OF MEDIATION, THEY REFUSED TO PAY  
2 FOR FIFTH MEDIATOR, THEY REFUSED TO TAKE OUR OFFERS SEER  
3 [KWRAOURS] LEE THEY REFUSE TODAY COUNTER OFFER, THEY NEED A  
4 COURT OFFICIAL TO SAY YOU GUYS ARE LOOKING AT \$5,000,000  
5 WORTH OF DAMAGES AND YOU'RE GOING TO HAVE TO OVERCOME THAT  
6 HURDLE, THEY DON'T THINK THEY HAVE TO OVERCOME THAT HURDLE.

7 MS. IBARRA: I WASN'T COULD YOU PLEASE OF RECORD BUT  
8 THERE WAS A MANDATORY SETTLEMENT CONFERENCE IN FRONT OF JUDGE  
9 BENEDICTION AND [CHEF | SHE HAVE] HAS A REPUTATION OF BRINGING  
10 PEOPLE TOGETHER AND SHE SAYS YOU GUYS AREN'T GOING TO HAVE  
11 SETTLE, THEY HAD A BENCH TRIAL THEY'VE OF OVERTURES BUT  
12 NOTHING TRIAL TAKE IT TO THE [PWREUFRPG] OF TRIAL, TAKE IT TO  
13 TRIAL AND THERE'S STILL NO SERIOUS OFFER SO I DON'T KNOW WHAT  
14 ELSE TO DO, WE JUST NEED TO GO FORWARD AND DO WHAT WE'RE  
15 SUPPOSED TO DO WITH THE JURY I THINK.

16 THE COURT: OKAY WELL IT'S A LITTLE LATE TO TRY TO  
17 SEND YOU TO A [SEPLT] [CON | COULD NOT] HOW MANY TIMES HAVE YOU  
18 BEEN.

19 MS. IBARRA: ONCE THAT I KNOW OF.

20 MR. STEIN: 2012.

21 MS. IBARRA: BEFORE THE BENCH TRIAL.

22 MR. STEIN: IN BENEDICTION WHO HAD A WALK AWAY BUT  
23 WHEN PEOPLE LEFT HER OFFICE SAYING WE'RE GOING TO AGREE WITH  
24 IT BUT WE WANT TO THINK ABOUT IT OVERNIGHT THEY CAME BACK AND  
25 SAID WE'RE NOT GOING TO GLOW IT IT.

26 MS. IBARRA: MY CLIENT HAVE A VERY DIFFERENT  
27 RECOLLECTION AND STATEMENTS THAT THE COURT MADE ABOUT THE  
28 REASONABLENESS OF EVERYBODY, YOU KNOW JUST THE HISTORY AND

1 THE DIFFERENT STORIES TOLD BY THE PARTIES HERE, SHE DIDN'T  
2 THINK IT WAS POSSIBLE THAT THERE WAS GOING TO BE ANY  
3 AGREEMENT. AND I THINK WE'VE SEEN IT, [THR\*R] THERE'S TWO  
4 VERY DIFFERENT STORE [AOERZ] ABOUT WHAT HAPPENED HERE, AND IF  
5 YOU'RE NOT AGREEING AS TO THAT, I JUST DON'T UNDERSTAND HOW  
6 YOU'RE GOING TO GROW AS TO WHO OWES WHAT TO WHOM, YOU KIND OF  
7 NEED THE JURY TO DECIDE THAT.

8 THE COURT: WELL IF YOU THINK YOU WANT TO GO LET ME  
9 KNOW BUT I NEED BOTH SIDES TO AGREE, OTHERWISE I CAN'T DO IT,  
10 IT WOULD BE A WASTE OF TIME TO SEND -- ESPECIALLY IN THIS  
11 CASE IF ONLY ONE SIDE IS INTERESTED.

12 MS. IBARRA: AND WE'RE NOT INTERESTED IN STALLING  
13 THE CASE, IT JUST NEED TO COME TO A RESOLUTION AT THIS POINT.

14 THE COURT: OKAY YOU CAN ALWAYS TALK TO EACH OTHER  
15 OUTSIDE THE COURT IT'S NOT HIKE YOU HAVE TO HAVE A REFEREE  
16 BUT I FEEL LIKE YOU'RE CLOSE AND YOU WANT SOMEBODY TO --.

17 MR. STEIN: WHAT IS ABSENT YOUR HONOR THE ABSENCE  
18 FALLING MS. GOAD AND MR. [PWO\*EL] WHO'S [TPH-PBG] LAWSUIT IN  
19 FRONT OF THE JUDICIAL OFFICER OR A SETTLEMENT OFFICER AND  
20 LETTING THEM KNOW THEY MAY BE IN FOR THE SAME \$5,000,000  
21 TREATMENT AND THE SAME ALTEREGO LIABILITY THAT THEY'RE TRYING  
22 TO PIN ON MR. STEIN AND THEY DON'T SEEM TO TAKE THAT  
23 SERIOUSLY.

24 MR. FORDYCE: I DO AGREE WITH THAT YOUR HONOR  
25 ACTUALLY AS THE NEWEST PERSON IN THE CASE, THIS IS WHAT I'M  
26 SEEING, AGAIN NOT FROM COUNSEL BUT I MEAN IF ALL I'M BEING  
27 TOLD EVERY TIME I APPROACH IS EITHER BEING PHYSICALLY  
28 APPROACHED BY MR. POLANCO OR BEING TOLD PUT A LARGE DOLLAR

1 AMOUNT ON THE TABLE, THAT'S NOT CONSTRUCTIVE, SO WE'RE --.

2 MR. STEIN: THERE IS NO LARGE DOLLAR AMOUNT, IF  
3 THEY'RE LOOKING FOR A JUDGMENT AGAINST JONATHAN STEIN THERE  
4 IS NO LARGE DOLLAR AMOUNT, THERE'S NOT.

5 MS. IBARRA: THERE'S OTHER THINGS THAT ARE JUST AS  
6 IMPORTANT AS WE'VE SAID BUT YOU KNOW IF YOU'RE NOT GROWING ON  
7 CERTAIN BASIC FACTUAL ELEMENTS HERE, THEN NOBODY IS GOING TO  
8 AGREE [TAZ] AS TO WHAT [PWROPBGZ] TO WHOM, [-P] JUST IN TERMS  
9 OF MONEY BUT IN TERMS OF RECORDS SO I DON'T KNOW WHAT ELSE TO  
10 SAY.

11 THE COURT: OKAY WELL IT MIGHT BE TOO LATE FOR THAT  
12 BUT YOU CAN KEEP TALKING IF YOU WANT. SO CAN WE -- WITH YOU  
13 DIRECT ME TO WHERE YOUR INSTRUCTIONS ARE CONCERNING  
14 CONVERSION.

15 MR. FORDYCE: THAT'S SECTION 8 YOUR HONOR.

16 THE COURT: THANK YOU I [TPOUPLD] IT.

17 MS. IBARRA: AND I HAVE SOME CONVERSION ONES AS WELL  
18 TOWARDS THE END.

19 MR. FORDYCE: AND YOUR HONOR JUST TO BE CLEAR THESE  
20 ARE NOT QUITE AS AS LONG AS THEY APPEAR TO BE. FOR YOUR  
21 HONOR'S CONVENIENCE WE INCLUDED SOURCES AND AUTHORITIES WITH  
22 EACH ONE.

23 THE COURT: I'LL ASSUMING THOSE CASE CITATIONS ARE  
24 NOT PART OF THE INSTRUCTION.

25 MR. FORDYCE: NO YOUR HONOR.

26 THE COURT: THOSE ARE JUST YOUR AUTHORITY.

27 MR. FORDYCE: AND EITHER WITH THE C.A.C.I. AUTHORITY  
28 IF IT'S A STRAIGHT C.A.C.I. INSTRUCTION OR THE AUTHORITIES

1 THAT WE PROPOSE IF IT'S MODIFIED IN ANY WAY SO.

2 MR. STEIN: SO 2100, I THINK C.A.C.I. 2100 IS THE  
3 KEY.

4 MS. IBARRA: YEAH SO I HAVE 2100 AS WELL.

5 THE COURT: OKAY THAT LOOKS LIKE -- IS IT A  
6 STANDARD? I DON'T KNOW, IT LOOKS LIKE -- IT SHOULD BE A  
7 STANDARD.

8 MS. IBARRA: IT IS A STANDARD.

9 MR. STEIN: NO NO IT'S FAR FROM STANDARD YOUR HONOR  
10 BECAUSE ONCE AGAIN, THE LOS ANGELES SHERIFF [HREF] [AOEFD] ON  
11 SANTA MONICA BOULEVARD ADDRESS FOR ALL BOOKS AND RECORDS  
12 THAT'S IN THE -- IT'S RIGHT IN THE LEVEE INSTRUCTION, IT'S  
13 ALL BOOKS AND RECORDS, ANYTHING FOR WHICH A METHOD OF LEVEE  
14 IS PROVIDED, THAT'S EXHIBIT 78 FIVE, 78 SIX WAS FOR TERMINAL  
15 STREET WHICH WAS THE OTHER RECORDS SO WHAT IT SAYS IS THAT  
16 EVERYTHING THAT THEY ARE CLAIMING WAS CONVERTED WAS LEVIED  
17 UPON UNDER COURT ORDER AND ACCORDING TO THE LAW WHICH IS  
18 CITED UNDER 2100, THEY MUST SHOW THAT THERE IS SOMETHING THAT  
19 WAS CONVERTED OTHER THAN WHAT THE SHERIFF LEVIED UPON WHICH  
20 WAS EVERYTHING.

21 THE COURT: SO I GUESS MY POINT IS THAT A FAILURE OF  
22 PROOF, YOU'RE GOING TO -- THESE ARE THE ELEMENTS THEY CAN'T  
23 MEET THEIR ELEMENTS BECAUSE THE SHERIFF LEVIED ON THE  
24 DOCUMENTS.

25 MR. STEIN: THE COURT --.

26 THE COURT: I DON'T THINK IT'S -- [TPH-RDZ], THAT'S  
27 JUST A FACT THAT'S PRESENT TODAY THE JURY, IF THEY ACCEPT IT,  
28 THEN THEY LOSS, PLAINTIFF LOSSES.

1 MR. STEIN: I'M SORRY THE COURT JUST SAID TWO  
2 DIFFERENT THINGS I THINK SO LET ME UNDERSTAND WHAT THE COURT  
3 SAID BETTER SO THESE SEEM TO BE TWO DIFFERENT THINGS.

4 THE COURT: DO YOU HAVE WANT ME TO REPEAT WHAT I  
5 JUST SAID.

6 MR. STEIN: YEAH I THINK.

7 THE COURT: WHAT I'M SAYING IS YOU GIVE THE  
8 ELEMENTS, STANDARD ELEMENTS AND THEN YOU PRESENT YOUR  
9 EVIDENCE THAT THE SHERIFF CAME OUT AND TOOK THE DOCUMENTS  
10 FROM THEM AND DEPOSITED WITH YOU AND IF THAT MEANS THERE WAS  
11 A FAILURE OF PROOF ON ANY ONE OF THESE ELEMENTS, THEN  
12 PLAINTIFF LOSES.

13 MR. STEIN: YOU HAVE TO HAVE SOME SORT OF  
14 INSTRUCTION THAT AVOIDS THE POINT EXACTLY WHAT THE COURT  
15 MADE, SAYING WELL, YOU ESCAPED THE SHERIFF. ONCE AGAIN, IF  
16 THERE IS A COURT ORDER INVOLVED, IT'S CALIFORNIA LAW THERE  
17 CAN BE NO CONVERSION BY A PUBLIC OFFICIAL.

18 THE COURT: WHERE IS THAT.

19 MR. STEIN: THAT IS BEHIND C.A.C.I. 2100.

20 THE COURT: BUT WHERE, GIVE ME THE CASE CITATION OR  
21 THE STATUTE THAT YOU'RE LOOKING FOR.

22 MR. STEIN: THAT'S WHAT I'M LOOKING FOR YOUR HONOR.

23 MS. IBARRA: AND YOUR HONOR.

24 THE COURT: BECAUSE I'M LOOKING AT THE USE NOTES IN  
25 THE C.A.C.I. INSTRUCTION 2100 AND THERE'S NOTHING LIKE THAT.

26 MS. IBARRA: AND YOUR HONOR OUR CONTENTION -- OUR  
27 FACTUAL CONTENTION HAS ALWAYS BEEN THAT THE ORIGINAL AND MORE  
28 SERIOUS ACT OF CONVERSION WAS WHEN HE MAINTAINED --.

1 THE COURT: THE ORIGINAL SET.

2 MS. IBARRA: THE ORIGINAL YES.

3 THE COURT: THE THREE BOXES.

4 MS. IBARRA: YES. THERE MAY BE A DEFENSE [TAOZ]  
5 WHAT THE SHERIFF LEVIED WAS IN 2007, IN SPRING OF 2007.

6 [LEFT2]: I BELIEVE SO.

7 MS. IBARRA: THAT'S SEPARATE BUT OUR ORIGINAL  
8 CONTENTION AND THE MAJORITY OF THE DOCUMENTS WERE JUST  
9 RETAINED POSSESSION IN SEPTEMBER OF 2006 -- 2006.

10 THE COURT: OKAY I'M GOING TO GIVE THE STANDARD AND  
11 IF YOU CAN TO THE A CASE, A SPECIFIC CASE TO ME BECAUSE YOU  
12 JUST HAVE A WHOLE BUNCH OF CASES STATED HERE THAT JUST GO  
13 THROUGH THE ELEMENTS AND DEFINITION OF CONVERSION AND IT'S  
14 JUST -- I REALLY NEED YOU TO PINPOINT WHERE --.

15 MR. STEIN: YOUR HONOR I WOULD LIKE TO DO THAT, WE  
16 HAVE SHOWN IT TO THE COURT I JUST CAN'T FIND IT NOW BUT THE  
17 COURT IS RIGHT TO ASK FOR IT.

18 THE COURT: YOU CAN POINT IT OUT TO ME WHEN YOU FIND  
19 IT. I'LL GIVE THE STANDARD IF THERE'S SOMETHING ELSE THAT  
20 NEEDS TO BE MODIFIED OR A SEPARATE INSTRUCTION THAT NEEDS TO  
21 BE GIVEN THEN YOU CAN PROPOSE IT. SO I'LL JUST GIVE THE  
22 STANDARD 2100, BREACH OF FIDUCIARY DUTY.

23 MS. IBARRA: BREACH OF FIDUCIARY DUTY WE CONTEND  
24 THAT THERE'S TWO SEPARATE BASIS FOR THAT, ONE OF THAT IS  
25 BECAUSE HE WAS AN EXECUTIVE OFFICER OF THE TRIBE AND THEN  
26 THERE'S A SECOND ONE FOR BREACH OF FIDUCIARY DUTY AS AN  
27 ATTORNEY.

28 MR. STEIN: YOUR HONOR THAT'S [TPH-PB] THEIR

1 COMPLAINT, THEY ONLY HAVE ONE IN THEIR COMPLAINT. THEIR  
2 FOURTH AMENDED COMPLAINT DOES NOT SHOW AS AN OFFICER, IT ONLY  
3 SHOWS AS AN ATTORNEY.

4 MS. IBARRA: IT HAS FACTUAL ELEMENTS HOWEVER THAT  
5 YOU WERE EXECUTIVE OFFICER, THE CHIEF DEVELOPMENT OFFICER FOR  
6 THE TRIBE AND THAT YOU WERE ALSO.

7 MR. STEIN: THAT'S NOT.

8 MS. IBARRA: ALSO AN.

9 MR. STEIN: THAT IS NOT IN THE BREACH OF FIDUCIARY  
10 DUTY CAUSE OF ACTION, IT'S ONLY FOR BEING AN ATTORNEY.

11 THE COURT: THIS IS THE SECOND CAUSE OF ACTION.

12 MR. STEIN: YEAH.

13 THE COURT: THE SECOND CAUSE OF ACTION, THE TRIBE  
14 ALLEGE AND RE ALL THE PRIOR. IT SEWS [SREUR] [TAOUT] THE  
15 [SPRAOEUPBT] ITEM STEIN AND AS AN OFFICER OF THE TRIBE AND T  
16 GT G A STEIN OWED TO THE TRIBE A FIDUCIARY OBLIGATION AT ALL  
17 TIMES AND WOULD REFRAIN CONTENT [AOE] AND GT G AS BEST  
18 INTEREST. AND THEN IN THAT SAME CAUSE OF ACTION THAT ARE  
19 PARAGRAPH 62 [-RBGTS] '61 [S-Z] THESE HEY [THUR] USURP  
20 ATTORNEY COMPLIANT FLIP GT G A STEIN AND LAW OFFICES OWED TO  
21 THE PLAINTIFF A FIDUCIARY OBLIGATION TO ACT IN THE BEST  
22 INTEREST OF THE TRIBE \*\* AND GT G A TO RETRAIN FROM ANY  
23 CONDUCT WOULD BE AT VERDICT TO GT AS BEST INTEREST.

24 MS. IBARRA: SO I THINK THAT I BOTH OFFICER AND  
25 ATTORNEY.

26 MR. STEIN: I STAND CORRECTED I AGREE.

27 THE COURT: THE PROBLEM IS YOU MAY NEED TO ASK IN  
28 THAT CAUSE OF ACTION IF THEY FIND -- IF THEY FIND THAT THERE



1 WAS A BREACH IS IT IN CONNECTION WITH AN OBLIGATION OWED TO  
2 THE TRIBE AS AN OFFICER OF THE TRIBE OR AS AN ATTORNEY.

3 MR. STEIN: BUT THE SMDC AGREEMENT SPECIFICALLY SAID  
4 THAT ANY WORK UNDER THE SMDC AGREEMENT.

5 THE COURT: RIGHT.

6 MR. STEIN: WAS NOT FIDUCIARY.

7 THE COURT: SO BUT THAT DOESN'T MAKE IT SO, THAT'S A  
8 QUESTION OF FACT SO THAT'S SOMETHING THAT THE JURY WILL LOOK  
9 AT, YOU'LL POINT OUT THAT THE CONTRACT SAYS ONE THING AND  
10 THAT'S A PIECE OF EVIDENCE.

11 MS. IBARRA: AND THE EXPERTS WILL PROBABLY OPINE ON  
12 THAT AS WELL.

13 THE COURT: BUT I DO THINK.

14 MR. STEIN: HOLD ON A SECOND [-RBGTS] HOLD ON A  
15 SECOND, WAIT A SECOND, THE EXPERTS ABOUT OPINE ON THAT DO WE  
16 HAVE A NEW EXPERT ON THE FIDUCIARY DUTY SEPARATE FROM THE  
17 ATTORNEY/CLIENT.

18 MS. IBARRA: [THO] YOU'RE REFERRING TO THE  
19 ATTORNEY-CLIENT, COUNSEL WAS REFERRING TO THE FACT THAT  
20 UNLESS I MISUNDERSTOOD WAS THAT THERE WERE PROVISIONS IN THE  
21 SMDC AGREEMENT THAT THIS CLAIMED FIDUCIARY DUTIES AS AN  
22 ATTORNEY SO THE EXPERT THAT THE PLAINTIFF WILL PROFFER WILL  
23 SAY THAT'S NOT VALID, THAT'S NOT A VALID -- [THARB].

24 MR. STEIN: AS AN ATTORNEY YOU'RE NOW SAYING THAT  
25 THE EXPERTS DID OPINE ON FIDUCIARY DUTY AS AN OFFICER.

26 MS. IBARRA: AS AN ATTORNEY. OH AS AN OFFICER, I'M  
27 SORRY I DON'T UNDERSTAND THAT. I DON'T KNOW IF MY CLIENT --  
28 MY WITNESS IS GOING TO OPINE ON THAT.

1 THE COURT: WELL YOU MAY NEED -- I DON'T KNOW YOU  
2 MAY NEED EXPERT ON THAT.

3 MR. STEIN: AND SHE DOESN'T HAVE ONE DESIGNATED.

4 THE COURT: THEN IT MIGHT BE A PROBLEM I DON'T KNOW.

5 MS. IBARRA: AND COUNSEL DOESN'T EITHER.

6 THE COURT: WELL YOU HAVE THE BURDEN.

7 MR. STEIN: YOU HAVE TO PROVE IT UP.

8 THE COURT: ANYWAY SO --.

9 MR. STEIN: YOUR HONOR SO THERE'S NO EXPERT OF  
10 FIDUCIARY DUTY OF AN OFFICER.

11 THE COURT: I DON'T KNOW IF ONE IS NECESSARY MAYBE,  
12 I'M JUST QUESTIONING --.

13 MS. IBARRA: I WOULD QUESTION HER TO MAKE SURE  
14 THAT'S SEPARATE, IT MIGHT BE AN ISSUE LAW.

15 THE COURT: ANYWAY, WHICH -- FIDUCIARY DUTY [W\*EUS]  
16 WHERE IS THAT THE C.A.C.I., DOES ANYBODY HAVE THE C.A.C.I.  
17 NUMBER.

18 MS. IBARRA: THE C.A.C.I. NUMBER IS, IT'S 4100.

19 MR. STEIN: 41 ZERO SIX IS FOR AN ATTORNEY.

20 MR. FORDYCE: 46 '06 IS FIDUCIARY DUTY.

21 MS. IBARRA: IT'S 4100 SERIES 41 '01 IS FAILURE TO  
22 REACH REASONABLE CARE.

23 THE COURT: 01 IS BREACH OF FIDUCIARY DUTY.

24 MR. FORDYCE: 4102 IS UNDIVIDED LOYALTY \*\*.

25 THE COURT: WHICH ONE IS THAT.

26 MR. FORDYCE: 4102. AND THEN 41 20 AFFIRMATIVE  
27 DEFENSE.

28 THE COURT: SO IS THAT THE -- YEAH I HAVE THINK

1 THAT'S THE BREACH THAT THEY'RE REFERRING TO AS ANGRY OFFICER  
2 IS 41 '02.

3 MS. IBARRA: YES DUTY OF UNDIVIDED LOYALTY.

4 MR. STEIN: BUFF YOUR HONOR HOW CAN THAT BE? IN  
5 OTHER WORDS IF STEIN WORKS FOR THE SMDC WHO'S A VENDOR AND  
6 HAS A NOMINAL POSITION IT HAS TO BE AS THE VENDOR BECAUSE  
7 OTHERWISE THERE IS DIVIDED LOYALTY FROM THE VERY BEGINNING.  
8 HOW DO YOU GET THERE.

9 THE COURT: I DON'T KNOW I GUESS THAT'S WHAT THE  
10 EVIDENCE WILL SHOW. SO OUR NEXT. AND THEN OF COURSE THESE  
11 ARE KIND OF ANCILLARY JURY INSTRUCTIONS WILL GO A- LOCK,  
12 FIDUCIARY DUTY EXPLAINED, 4100. FAILURE TO USE REASONABLE  
13 CARE.

14 MR. STEIN: NO THAT'S REASONABLE CARE IS -- THAT'S  
15 COMMON DUTY.

16 MS. IBARRA: OH 41 '01.

17 THE COURT: 41 '01.

18 MR. STEIN: WHERE'S 41 '01.

19 MR. FORDYCE: WE DON'T HAVE IT.

20 MR. STEIN: WHAT DID YOU SEE 41 '01 STATE.

21 MS. IBARRA: FAILURE TO USE REASONABLE CARE, DUTY TO  
22 USE REASONABLE CARE, IT'S DOUBLE SIDED SO.

23 MR. STEIN: BREACH OF FIDUCIARY DUTY TO USE  
24 REASONABLE CARE, THERE'S NO FIDUCIARY DUTY TO USE REASONABLE  
25 CARE.

26 MS. IBARRA: ITS CASE [AOE] 41 '01, WELL THIS IS  
27 REASONABLE CARE AS A LAWYER.

28 THE COURT: WELL THERE'S ALREADY AN INSTRUCTION THAT

1 DEALS WITH A LAWYER.

2 MR. STEIN: SO THAT'S WHAT I'M SAYING, THIS ONE SAYS  
3 NUMBER ONE STEIN WAS THE TRIBES LAWYER AND/OR AN EXECUTIVE  
4 OFFICER SO RIGHT THERE YOU'VE GOT TWO DIFFERENT QUESTIONS,  
5 STYLE ACTED ON THE TRIBES BEHAVE FOR PURPOSES OF THE MAJORITY  
6 OF THEIR RELATIONSHIP AND THAT STEIN FAILED TO AS AIN'T  
7 REASONABLY CAREFUL LAWYER OR REASONABLY CAREFUL OFFICER.

8 Q. SO IS THAT UNDIVIDED LOYALTY AND/OR REASONABLE CARE?

9 A. REASONABLE CARE, HAD 101. IF THE COURT BELIEVES  
10 THAT THE OTHER INSTRUCTION ON LAWYERS SUFFICES.

11 THE COURT: NO NO NO THE [HRAERPL] THEY ARE THE  
12 BREACH OF FIDUCIARY DUTY.

13 MS. IBARRA: TOSS A DUPLICATIVE WE CAN STRIKE THE  
14 LANGUAGE AS A LAWYER AND JUST SAY AS AN EXECUTIVE OFFICER FOR  
15 41 '01 \*\*.

16 THE COURT: RIGHT WE'RE ADDRESSING THE ISSUE OF WHAT  
17 TO GIVE WITH RESPECT TO THE CLAIM THAT HE --.

18 MS. IBARRA: TO THE EXECUTIVE OFFICER.

19 THE COURT: [PWRA\*EFP] BREACHED HIS FIDUCIARY DUTY  
20 WHEN HE WAS AN OFFICER. SO MY QUESTION WAS DID THE JURY  
21 INSTRUCTIONS GIVE YOU TWO WAYS TO DO THAT AND I'M NOT SURE  
22 WHAT YOU PLED, THERE'S LACK OF REASONABLE CARE AND THERE'S  
23 BREACH OF THE UN DIVIDED LOYALTY DUTY. WHAT DID YOU  
24 [SPHRAED] WITH RESPECT TO HIM AS AN OFFICER.

25 MS. IBARRA: I BELIEVE WE PLED BOTH BUT DEFINITELY  
26 UNDIVIDED LOYALTY BECAUSE THE CONFLICT OF INTEREST WE  
27 EXPLAINED EARLIER WE THINK IS INHERENT IN NOT PURE SUING  
28 FEDERAL RECOGNITION AND PURSUING GAMING IN CALIFORNIA WITHOUT

1 FEDERAL RECOGNITION AND THAT -- THE BASIS OF THAT WAS THE  
2 FACT THAT THERE WAS GOING TO BE A PROBLEM WITH THE 10 YEARS  
3 REVENUE FROM THE SMDC AGREEMENT.

4 THE COURT: YEAH WHEN LOOKING AT YOUR SECOND CAUSE  
5 OF ACTION, IT LOOKS LIKE -- YOU'RE NOT [TKHRAEUPLG] AS AN  
6 OFFICER HE'S DOING SOMETHING NEGLIGENT WHAT YOU'RE SAYING IS  
7 HE DIDN'T ACT WHY YOUR BEST INTEREST WHICH WOULD BE A DUTY OF  
8 UN DIVIDED LOYALTY SO I THINK WITH RESPECT TO AN OBLIGATION  
9 OF A LAWYER YOU'RE REFERRING TO 41 '02 DUTY OF UNDIVIDED  
10 LOYALTY.

11 Q. DOES THAT PRECLUDE 41 '01.

12 THE COURT: WELL YOU DON'T ALLEGE ANYTHING IN YOUR  
13 CAUSE OF ACTION THAT SAYS HE DID ANYTHING WITHOUT REASONABLE  
14 CARE.

15 MR. STEIN: AND YOUR HONOR --.

16 THE COURT: [SEFP] APPS AN ATTORNEY YOU ALLEGE THAT  
17 BUT THAT'S ALREADY COVERED.

18 MS. IBARRA: SO AS A --.

19 THE COURT: UNLESS YOU CAN FIND SOMETHING FOR ME  
20 SOMEWHERE ELSE IN THE COMPLAINT BUT THAT'S WHAT YOUR SECOND  
21 CAUSE OF ACTION ALLEGES. IF YOU LOOK AT YOUR SECOND CAUSE OF  
22 ACTION BEGINS ON PAGE 18 PARAGRAPH A- 52.

23 MS. IBARRA: YES.

24 MR. FORDYCE: I THINK IT BEGINS ON PAGE 19 AT  
25 PARAGRAPH 60.

26 THE COURT: OH I'M SORRY YOU'RE RIGHT 19, 60.

27 MR. FORDYCE: SORRY YOUR HONOR I'M JUST MAKING SURE  
28 WE ARE ALL LOOKING AT THE SAME DOCUMENT.

1 THE COURT: RIGHT, I'M LOOKING AT THAT BUT I --  
2 YOU'RE RIGHT. WELL.

3 MR. STEIN: YOUR HONOR YOU DO KNOW THAT THE EVIDENCE  
4 HAS ALREADY SHOWN THAT STEIN RESIGNED AS AN OFFICER ON  
5 SEPTEMBER 9TH SO THAT ALL OF THESE EVENTS THAT THEY'RE  
6 [KPHRAEUPLG] COMPLAINING ABOUT WAS AFTER HE WAS NO LONGER AN  
7 OFFICER.

8 MS. IBARRA: OKAY. I THOUGHT IT WAS DISPUTED  
9 WHETHER OR NOT -- BUT I'M HAPPY TO TAKE THE -- IF COUNSEL IS  
10 NOW REPRESENTING THAT HE SEPARATES THAT HAD HE RESIGNED AND  
11 HE HAD NO FURTHER AUTHORITY AFTER THAT DAY THAT SIGNIFICANTLY  
12 CHANGES THE WAYS WE WERE GOING TO PRESENT THE FACT BECAUSE UP  
13 TO NOW HE IT HAD BEEN DISPUTED WHETHER MR. STEIN RESIGNED OR  
14 WHETHER MR. STEIN WAS TERMINATED IN --.

15 MR. STEIN: THERE WAS NO DISPUTE ON THE ISSUE IT'S  
16 RESIGNATION OF THE TRIBAL ENTITY, GTGA, WHICH IS DIFFERENT  
17 THAN GT TRIBE. NOW YOU HAVE TO UNDERSTAND GTGA IS NOT A  
18 PLAINTIFF, SO YOU HAVE GTGA IS A DIFFERENT ENTITY FROM GT  
19 TRIBE.

20 MS. IBARRA: GTGA WAS AN INSTRUMENTALITY OF THE  
21 TRIBE AS HAS BEEN REPRESENTED BY MR. STEIN YOU THREW OUT THIS  
22 LITIGATION, MR. STEIN CREATED IT, IT WAS -- IT WAS JUST AN  
23 INSTRUMENTALITY OF THE TRIBE, IT WAS NOT A SEPARATE -- A  
24 SEPARATE ENTITY FROM IT.

25 THE COURT: REMEMBER THESE JURY INSTRUCTIONS WERE --  
26 THESE ARE TENTATIVE AT THE END OF THE CASE WE KIND OF REVIEW  
27 THEM AGAIN AND DECIDE WHAT WE'RE GOING TO GIVE. SO FAR WHAT  
28 WE'VE DETERMINED, LET ME LOOK AT 2100 AGAIN BECAUSE I CAN'T

1 REMEMBER IF I -- IT 2100 WERE THERE EXTRA INSTRUCTION THAT'S  
2 WITH A [WR\*] GIVEN WITH 2100, I THINK THERE MAY HAVE BEEN A  
3 DEFINITION OF CONVERSION BUT -- NO.

4 MR. STEIN: WE HAVE AFFIRMATIVE DEFENSES YOUR HONOR.  
5 WE HAVE THE PRESUMED MEASURE THE DAMAGES UNDER 21 '02.

6 THE COURT: THERE'S SOMETHING CALLED PRESUMED  
7 MEASURE OF DAMAGES FOR [DO NOT|DONE] VERSION.

8 MR. FORDYCE: I THINK THAT'S RIGHT YES HER HONOR  
9 THAT'S 21 '02.

10 MS. IBARRA: AND THAT'S WHAT WE SUBMITTED.

11 THE COURT: IS SOMEBODY GOING TO GIVE A FAIR MARKET  
12 VALUE OF THE MEMBERSHIP RECORDS.

13 MR. STEIN: THAT'S EXACTLY WHAT'S LACKING YOUR  
14 HONOR, AND THEY HAVE NO EXPERT, THEY HAVE NO EXPERT AND ONCE  
15 AGAIN, ALL THE RECORDS WERE LEVIED UPON, THE WRITS SAID ALL  
16 PROPERTY FOR WHICH A METHOD OF LEVEE IS PROVIDED, THAT'S ALL  
17 THEIR RECORDS.

18 THE COURT: WELL WE'LL SEE.

19 MS. IBARRA: BUT THAWS THE REASON FOR PRESUMED  
20 MEASURE OF THE DAMAGES IS THE [PRAOEUB] DOES NOT HAVE TO  
21 PROVE THE EXACT AMOUNT OF DAMAGES AND ONE OF THEM IS  
22 REASONABLE COMPENSATION FOR THE TIME AND MONEY SPENT BY THE  
23 TRIBE IN ATTEMPTING TO RECOVER HIS BUSINESS, FINANCIAL,  
24 MEMBERSHIP RECORDS.

25 MR. FORDYCE: WELL THE JURY CAN'T MAKE THAT  
26 DETERMINATION YOUR HONOR, WHAT DOLLAR AMOUNT IS THAT GOING TO  
27 BE AND WHY IS THAT IN THE HANDS OF A JURY, THAT'S FOR AN  
28 EXPERT.

1 THE COURT: WE'LL SEE. SO 21 '02 I'LL GIVE WITHOUT  
2 PREJUDICE. SO NELLI JUST TO RECAP, C.A.C.I. 2100 AND 21 '02  
3 I'LL GIVE, THESE ARE ALL WITHOUT PREJUDICE BECAUSE WE DON'T  
4 KNOW WHAT'S GOING TO TURN UP AT THE END OF THE TRIAL,  
5 C.A.C.I. 21 ZERO SIX GIVE, C.A.C.I. 21 '02 GIVE, C.A.C.I.  
6 4100 GIVE.

7 THE CLERK: AND 41 '01 DID YOU TALK ABOUT.

8 MR. FORDYCE: NO.

9 THE COURT: NO I DON'T THINK WE TALKED ABOUT 41 '01.

10 MR. FORDYCE: YEAH I THINK COUNSEL WE TALKED ABOUT.

11 MS. IBARRA: OH NO 41 '01 THAT'S RIGHT, THE COURT  
12 SAID THAT WAS REASONABLE CARE AND WE HADN'T PLED THAT, YOU'RE  
13 RIGHT.

14 THE COURT: I DON'T SEE ANYTHING IN YOUR COMPLAINT  
15 THAT ALLEGES THAT.

16 MS. IBARRA: THAT'S FINE.

17 THE COURT: BUFF IT'S THE DUTY OF LOYALTY.

18 MR. STEIN: YOUR HONOR AGAIN THE PLAINTIFF IN THE  
19 COMPLAINT GTGA BECAUSE MR. STEIN WAS AN OFFICER OF GTGA NOT  
20 THE TRIBE.

21 THE COURT: I DON'T KNOW WHAT'S IN THE I'M GOING  
22 OVER THE JURY INSTRUCTION [SOZ] LET'S GET THROUGH THIS AND  
23 WE'LL GO OVER YOUR ISSUES, ARE YOU REFERRING TO THE JURY  
24 INSTRUCTION IN SOME WAY.

25 MR. STEIN: YES HAD YOU CONDITION GIVE A JURY  
26 INSTRUCTION TO BE AN OFFICER OF THE TRIBE IF THE EVIDENCE HAS  
27 HAD ALREADY SHOWN THAT HE'S AN OFFICER OF GTGA NOT THE TRIBE.

28 THE COURT: I DON'T THINK THE EVIDENCE HAS SHOWN



1 THAT.

2 MR. STEIN: SHE SHEPPARD MULLIN SPECIFICALLY STATES  
3 IN THEIR LETTER OF OCTOBER 3 THAT WAS AN EXHIBIT IN THE CASE  
4 THAT SAYS YOU HAVE RESIGNED AS AN OFFICER OF GTGA.

5 THE COURT: MR. STEIN JUST SO YOU KNOW JURY  
6 INSTRUCTIONS DEPEND ON EVIDENCE PRESENTED ON TRIAL, I HAVEN'T  
7 HEARD THE EVIDENCE YET WE'RE JUST KIND OF GOING ON WITH THE  
8 GENERIC ONES. SO YOUR ARGUMENTS CONCERN THE EVIDENCE ARE  
9 JUST NOT APPROPRIATE AT THIS TIME.

10 MR. STEIN: SURE.

11 THE COURT: IF IT TURNS OUT THERE'S NO EVIDENCE TO  
12 SUPPORT AN INSTRUCTION THEN I WON'T GIVE IT.

13 MR. STEIN: VERY GOOD.

14 THE COURT: SO MISAPPROPRIATION OF TRADE SECRET,  
15 WHERE IS THAT C.A.C.I., WHAT NUMBER IS THAT OR WHAT TAB DO  
16 YOU HAVE.

17 MS. IBARRA: I DON'T HAVE A TAB FOR EACH OF THE  
18 CAUSES OF ACTION BUT THIS PROVISION OF TRADE SECRETS IS 44  
19 '01 AND THAT BEGINS WITH THAT SERIES.

20 THE COURT: 44 '01.

21 MS. IBARRA: MISS [PROEP] [KWRAEUGS] OF TRADE  
22 SECRET, ESSENTIAL FACTUAL ELEMENTS AND THEN 44 '02 DEFINES  
23 TRADE SECRETS.

24 THE COURT: RIGHT 44 '01 LET ME GIVE THAT IT'S  
25 MISAPPROPRIATION OF TRADE SECRETS [SEPB] [-RL] ELEMENTS, AND  
26 44 '02 IS THE DEFINITION OF TRADE SECRETS I'LL GIVE THAT.

27 MS. IBARRA: 44 '03 IS THE SEEK SEE REQUIREMENT, 44  
28 '04 IS THE REASONABLE --.

1 THE COURT: WAIT A MINUTE YOU'RE GOING TOO FAST.

2 MS. IBARRA: SORRY.

3 THE COURT: SEEK SEE REQUIREMENT.

4 MS. IBARRA: YES.

5 THE COURT: OKAY 44 '03 WE SHOULD GIVE THAT ONE.

6 MS. IBARRA: YES.

7 THE COURT: 44 '04 REASONABLE EFFORTS TO PROTECT  
8 SEEK SEE.

9 MS. IBARRA: YES.

10 THE COURT: YOU HAVE WANT THAT ONE.

11 MS. IBARRA: [-S] YES WE WANT THAT ONE.

12 THE COURT: OKAY REASONABLE EFFORTS, OH OKAY. SO  
13 PLAINTIFF HAS TO SHOW THAT THEY MADE REASONABLE EFFORTS TO  
14 KEEP IT SECRET.

15 MS. IBARRA: YES CONFIDENTIAL.

16 MR. STEIN: YEAH I HAVE AGREE WE SHOULD GIVE THAT  
17 ONE, BECAUSE ONCE AGAIN I'M ARGUING EVIDENCE SO I DON'T WANT  
18 TO --.

19 THE COURT: NO I UNDERSTAND.

20 MR. STEIN: IT'S JUST PRETTY OBVIOUS IF IT'S SITTING  
21 IN THE OFFICE FOR SIX [TKWRAERZ].

22 MS. IBARRA: AND WE ADMIT WE NEED TO PROVE THAT THAT  
23 IT WASN'T GENERALLY WELL-KNOWN BY THE PUBLIC AND THAT WE KEPT  
24 IT CONFIDENTIAL.

25 THE COURT: WELL IT'S MORE THAN THAT.

26 MS. IBARRA: YEAH.

27 THE COURT: MISAPPROPRIATION BY ACQUISITION.

28 MS. IBARRA: SO WE DON'T BELIEVE THAT ONES

1 APPROPRIATE BECAUSE WE BELIEVE HE RETAINED POSSESSION OF THE  
2 DOCUMENTS SO.

3 THE COURT: MISS A- [PROEP].

4 MS. IBARRA: AND THEN 4506 IS MISS A- [PRAOEP]  
5 [KWRAEUGS] BY DISCLOSURE BECAUSE WE BELIEVE IT WAS DISCLOSE  
6 [H-D] AFTER IT WAS RETAINED.

7 THE COURT: OH I SEE.

8 MR. STEIN: WELL ONCE AGAIN THEY'RE SAYING THAT THE  
9 CANDELARIA FACTION, THE JURY HAS JUST FOUND THAT THEY'RE NOT  
10 DIFFERENT FROM THE CANDELARIA FACTION.

11 MS. IBARRA: I DON'T -- I DISAGREE THAT'S WHAT THE  
12 JURY FOUND.

13 THE COURT: I'M NOT SURE THEY FOUND THAT, THEY FOUND  
14 THAT THIS GROUP HAS STANDING TO PURSUE THEIR CLAIMS.

15 MR. STEIN: BY THE WAY, CAN I JUST ASK THE CLERK,  
16 DID THE JURY INSTRUCTIONS THAT [WEFRPBT] TO THE JURY HAVE THE  
17 CHANGES [H-RBG] NUT PAGE IN IT [KHRERB] CLERK SPECIAL JURY  
18 INSTRUCTION NUMBER 2.

19 MR. STEIN: YES.

20 THE CLERK: YES.

21 MR. STEIN: THANK YOU.

22 THE COURT: SO THE [RA\*EBL] REASON YOU'RE SUGGESTING  
23 44 '05 SHOULD BE GIVEN BECAUSE HE DIDN'T USE -- MR. STEIN  
24 DIDN'T USE IMPROPER MEANS TO ACQUIRE.

25 MS. IBARRA: NO HE RETAINED POSSESSION OF THEM SO IT  
26 WAS JUST RETAINED POSSESSION NOT THAT HE USED IMPROPER MEANS.  
27 HE ALWAYS HAD POSSESSION OF THAT FAR.

28 THE COURT: WELL HAD HE DIDN'T HAVE THE SECOND

1 GROUP.

2 MS. IBARRA: OF THE ONES FROM THE SHERIFF THE WRIT  
3 OF ATTACHMENT.

4 THE COURT: RIGHT.

5 MS. IBARRA: I'M NOT AGAINST GIVING THAT  
6 INSTRUCTION. I THINK THAT'S THE DEFENSE THAT HE'S GOING TO  
7 USE THAT IT WAS -- THAT IT WAS PART UH-HUH KNOW LITIGATION  
8 PRIVILEGE AND IT'S PROTECTED ACTIVITY TO USE.

9 MR. STEIN: NO YOUR HONOR THAT'S NOT AT ALL THE  
10 CASE.

11 MS. IBARRA: BUT I'M NOT ADVERSE TO GIVING IT AND  
12 THEN HAVING THE JURY DECIDE WHETHER OR NOT THAT WAS A PROPER  
13 OF USE OF COURT --.

14 MR. STEIN: 44 '02 TRADE SECRET DEFINE HAD HE SAYS  
15 TO PROVE THE CONFIDENTIAL MEMBERSHIP INFORMATION WAS A TRADE  
16 SECRET THEY HAVE TO SHOW THAT THE CONFIDENTIAL MEMBERSHIP  
17 INFORMATION WAS KEPT SECRET BUT IT WAS ALL THE KEPT BY  
18 [PWAO\*RG] THAT'S WHY WE HAVE TO HAVE HER A WITNESS AS A WE  
19 HAVE ALL HOW FAR CAN WITH BE I HE SET FROM SMDC IF SMDC  
20 ACTUALLY CREATED THE RECORDS AND KEPT [AOULT] RECORDS IN THE  
21 LAW OFFICE SO I THINK --.

22 THE COURT: WELL THEN THEY MAY HAVE A ARGUMENT TO  
23 NOT MAKE.

24 MS. IBARRA: YOUR HONOR THIS ISSUE COMES UP ALL TIME  
25 IN THE CONTEXT OF EMPLOYEES WHO LEAVE AND -- I MEAN THEY HAD  
26 PROPER POSSESSION OF THEIR [PHRAOEUF] [KWHRAOEUZ] TRADE  
27 SECRETS BUT THEN THEY TAKE THEM WITH THEM WHEN THEY HAVE NO  
28 RIGHT TO [PO\*ES] THEM THIS IS A VERY COMMON PATTERN.

1 THE COURT: I UNDERSTAND I'VE SEEN IT A LOT. SO 44  
2 '05 AND FOUR 406, I WILL [TPEUF] THEM, AGAIN THESE ARE  
3 TENTATIVE BUT THEY SEEM TO BE APPROPRIATE. MISAPPROPRIATION  
4 BY USE.

5 MS. IBARRA: WE REQUESTED THAT ONE.

6 THE COURT: USE WITHOUT CONSENT.

7 MS. IBARRA: YES.

8 MR. STEIN: 44 --.

9 THE COURT: '07 IS MISAPPROPRIATION BY USE.

10 MR. STEIN: SO WHAT IS THE COURT GOING TO GIVE  
11 ALREADY, I'M A LITTLE BIT CONFUSED.

12 THE COURT: '01 THROUGH '07, 44 '01 THROUGH FOUR  
13 407. FOUR 408 IS IMPROPER MEANS OF A- [KWAOEURS] A TRADE  
14 SECRET, THIS ISN'T A CASE WHERE WIRETAPPING OR [PWROEUB]  
15 [RAOE] OR SOMETHING LIKE THAT WAS USE TODAY ACQUIRE THE TRADE  
16 SECRET SO I DON'T THINK FOUR 408 IS APPROPRIATE.

17 MS. IBARRA: THAT'S WHY WE'RE NOT REQUESTING THIS  
18 ONE.

19 THE COURT: RECOMMENDATION FOR MISAPPROPRIATION.  
20 FOUR 409, NO.

21 MS. IBARRA: DID NOT REQUEST 44 10.

22 THE COURT: UNJUST ENRICHMENT DOESN'T APPEAR TO THE  
23 CASE. [PAOUPBLG] DAMAGES TORE WILLFUL MALICIOUS  
24 MISAPPROPRIATION.

25 MS. IBARRA: WELL WE'RE REQUESTING IT.

26 THE COURT: NO IT IS IN THAT THIS PHASE, WHAT  
27 HAPPENS IS THE JURY FIND MALICE, OPPRESSION, OR FRAUD, IN  
28 THIS CASE LOOKS LIKE JUST MALICE, I DON'T KNOW LET ME READ

1 IT, YEAH WILLFULLY AND MALICIOUSLY, IF THEY MAKE THAT FINDING  
2 THEN THE SECOND PHASE DEAL WITH -- IN THIS CASE I GUESS THIRD  
3 PHASE DEALS WITH DAMAGES SO THAT'S HOW IT'S BROKEN UP, SO  
4 THIS WOULD BE GIVEN IN THE FIRST PHASE, 44 11.

5 THE CLERK: WHAT HAPPENED TO 44 10 I DIDN'T GET THAT  
6 ONE.

7 THE COURT: NO, 44 10, NO THAT'S THE [UPBLG] JUST  
8 ENRICHMENT, 44 12, INDEPENDENT ECONOMIC VALUE. I DON'T KNOW.

9 MS. IBARRA: WE REQUESTED THIS, SEE THE AMOUNT OF  
10 MONEY TIME AND LABOR THAT THE TRIBE EXPENDED IN DEVELOPING  
11 THE CONFIDENTIAL MEMBERSHIP LIST IN AMOUNT OF TIME MONEY OR  
12 LABOR THAT WOULD BE -- D IS THE AMOUNT OF TIME MONEY OR LABOR  
13 THAT WOULD BE SAVED BY COMPETITOR WHO USED BY CONFIDENTIAL  
14 [PHERD] LIST.

15 MR. STEIN: WHAT COMPETITOR.

16 MR. FORDYCE: IT MAKES NO SENSE.

17 MR. STEIN: WHAT COMPETITOR.

18 MS. IBARRA: THE CANDELARIA GROUP.

19 MR. STEIN: THEY DON'T HAVE ANY EVIDENCE THAT THE  
20 CANDELARIA GROUP IS A [KPAET]-ER, THE SAME MEMBERS OF GT  
21 TRIBE \$1500 OF THEM BECAME MEMBERS OF THE CANDELARIA GROUP  
22 HOW CAN THEY BE A COMPETITOR WITH GT TRIBE.

23 MS. IBARRA: OUR FACTUAL CONTENTION IS THAT THEY  
24 WERE A COMPETITOR OF TRIBE AND THAT MR. STEIN SET THEM UP TO  
25 BE A COMPETITOR AND IN FACT THEY APPROACHED LIBRA AFTER THEY  
26 DISMISSED LIBRA FROM THE LAWSUIT IN ORDER TO HAVE THE  
27 REMAINDER OF THE MONEY THAT WAS PROMISED FROM LIBRA TO THE  
28 TRIBE TO BE DIRECTED TO THE CANDELARIA GROUP AND THAT LIBRA

1 REFUSED.

2 THE COURT: ALL RIGHT. 44 12, WE'LL SEE HOW THE  
3 EVIDENCE SHAPES OUT. AFFIRMATIVE DEFENSE INFORMATION WAS  
4 READILY ASCERTAIN [A\*PLT] [ABL] BY PROPER MEANS. ARE YOU  
5 CLAIMING THAT --.

6 MS. IBARRA: I DON'T HAVE 44 13, NO I DON'T HAVE IT  
7 DOWN SO IT MUST HAVE --.

8 MR. STEIN: WE WOULD LIKE THE AFFIRMATIVE DEFENSE.

9 THE COURT: OKAY. WHAT EVIDENCE DO YOU HAVE THAT IT  
10 WAS READILY ASCERTAINABLE BY PROPER MEANS?

11 MR. STEIN: IT WAS LEFT IN THE LAW OFFICE, IT WAS  
12 CREATED BY SMDC AND IT WAS LEFT IN THE LAW OFFICE, SO IT WAS  
13 PROPER FOR SMDC TO GO INTO THE SAME COMPUTER RECORDS THAT  
14 THEY CREATED.

15 MS. IBARRA: SO MY CLIENT IS GOING TO CONTENT.

16 MR. STEIN: SO THEY CAN SAY IT WAS A BREACH OF  
17 FIDUCIARY DUTY, BUT THEY CAN'T SAY IT'S A MISAPPROPRIATION OF  
18 TRADE SECRET WHEN IT WAS A BREACH THAT WAS CREATED BY SMDC  
19 AND BARBARA GARCIA.

20 MS. IBARRA: MY CLIENT IS GOING TO SAY THAT SMDC HAD  
21 PROPER USE OF THAT INFORMATION WHILE STILL A- FILL WAITED-D  
22 WITH THE TRIBE BUT NOT AFTERWARD.

23 THE COURT: BUT WHAT DOES YOUR AFFIRMATIVE DEFENSES  
24 SAY, CAN YOU PRINT THE AFFIRMATIVE DEFENSES AND SEE BECAUSE  
25 YOU HAVE TO ALLEGE THIS. WE SHOULD PROVE [HAOE] TAKE A  
26 BREAK.

27 MR. STEIN: IT WAS READILY ASCERTAINABLE BY PROPER  
28 MEANS AT THE TIME OF THE ALLEGED DISCLOSURE.

1 THE COURT: I HAVE YOUR ANSWER. OKAY WHERE IS  
2 YOUR -- WHERE IS THAT, I'M FIND [T-G] IN JUST SECOND. IT'S  
3 MORE OF A GENERIC IT IS THE REASONABLE CONDUCT THE 14TH  
4 AMENDMENT TO THE COMPLIANT IS REASONABLE CONDUCT AND 15TH IS  
5 ASSUMPTION OF RISK AND THEN 18 IS MONTH BREACH OF DUTY THOSE  
6 ARE ALL EQUIVALENT TO THE AFFIRMATIVE DEFENSE AND  
7 MISAPPROPRIATION OF TRADE SECRETS.

8 MS. IBARRA: YOUR HONOR I'M NOT SURE THAT'S  
9 SUFFICIENTLY SPECIFICALLY TO HAVE --.

10 THE COURT: YEAH THAT'S JUST A GENERAL DENIAL PRETTY  
11 MUCH.

12 MR. STEIN: WELL THERE'S ALSO BUSINESS JUDGMENT  
13 UNDER 44, IN OTHER WORDS I WAS ALLOWED TO -- I WAS PROTECTED  
14 UNDER THE BUSINESS JUDGMENT RULE.

15 MS. IBARRA: FROM MISAPPROPRIATION -- WAIT, WE'RE  
16 STILL TALKING ABOUT TRADE SECRETS.

17 THE COURT: WHICH AFFIRMATIVE DEFENSE ARE YOU  
18 CLAIMING APPLIES.

19 MS. IBARRA: BUSINESS JUDGMENT.

20 MR. STEIN: 14 AND 13 [#\*] 15 AS WELL AS BUSINESS  
21 JUDGMENT AT THE [TPAEUBLT].

22 THE COURT: GOOD FAITH BELIEVE THAT THEIR CONDUCT  
23 WAS LAWFUL, I DON'T SEE ANY AFFIRMATIVE DEFENSE THAT WOULD --  
24 WELL I DON'T KNOW MAYBE -- IT'S VERY GENERIC AND THAT'S JUST  
25 SAYING I THOUGHT IT WAS -- I THOUGHT I WAS RIGHT.

26 MS. IBARRA: TO TAKE THE RECORDS.

27 THE COURT: I MEAN THAT'S JUST. I DON'T THINK  
28 THAT'S ENOUGH.



1 MR. STEIN: WELL 25TH AFFIRMATIVE DEFENSE IS  
2 CONSENT, PLAINTIFFS IMPLIEDLY OR EXPRESSLY CONSENTED TO THE  
3 CONDUCT OF DEFENDANTS. THEY LEFT THE RECORDS IN THE OFFICE.

4 THE COURT: OKAY WELL.

5 MR. STEIN: THEY WEREN'T TRADE SECRETS AT ALL, THEY  
6 WERE IN THE POSSESSION OF SMDC.

7 MS. IBARRA: THEY WEREN'T GENERALLY AVAILABLE TO  
8 ANYONE OUTSIDE OF SMDC OR THE DIRECT EMPLOYEE.

9 MR. STEIN: THEY WERE AVAILABLE TO CANDELARIA  
10 FACTION AND THEY WERE AVAILABLE TO SMDC.

11 THE COURT: I WAS JUST THINKING CONSENT MIGHT BE IN  
12 THE ELEMENTS SOMEWHERE OR DEALT WITH IN THE ELEMENTS, AGAIN  
13 THE AFFIRMATIVE DEFENSE READS INFORMATION WAS READILY ASS  
14 TAPE [ABL] BY PROPER MAN'S, IT WAS SITTING IN THE LAW OFFICES  
15 OF JONATHAN STEIN, THEY'D BEEN PAID FOR MY SMDC AND IT WAS ON  
16 A COMPUTER OWNED BY SMDC. IF THEY WANTED TO KEEP IT SECRET  
17 THEY SHOULD HAVE SAID NO NO NO WE'RE GOING TO BUY OUR OWN  
18 COMPUTER AND WE'RE GOING TO DO THIS OURSELVES SO WE SHOULD BE  
19 OUR AFFIRMATIVE DEFENSE AVAILABLE NOT TO SAY THEY CAN'T HAVE  
20 THEIR JURY INSTRUCTIONS WE SHOULD JUST HAVE OR AFFIRMATIVE  
21 DEFENSE TO ARGUE.

22 THE COURT: OKAY I'LL GIVE THE 44 20, AFFIRMATIVE  
23 DEFENSE.

24 MR. STEIN: AND THEN THE OTHER ONE IS THE STATUTE OF  
25 LIMITATIONS YOUR HONOR.

26 THE COURT: RIGHT.

27 MR. STEIN: BECAUSE [WUPB] AGAIN [TPH-FS] ACE TRADE  
28 SECRET THEY WOULD HAVE HAD TO DECLARE IT A TRADE SECRET BACK

1 IN 2001.

2 MS. IBARRA: TWO [THO] ONE.

3 MR. STEIN: AND HAD NOT WAIT FIVE YEARS WITHOUT  
4 DECLARING A TRADE SECRET.

5 MS. IBARRA: BUT IT WAS -- YOUR HONOR.

6 THE COURT: YES.

7 MS. IBARRA: IT WAS -- IT WAS A DYNAMIC DOCUMENT, IT  
8 WAS A DATABASE OF [PEOPLES|PEOPLE'S|PEOPLE'S] INFORMATION AND  
9 IT WAS DIFFERENT -- GREW EVERY YEAR SO IT WAS THE STATUTE OF  
10 LIMITATIONS IS AT THE TIME YOU FILED YOUR CLAIM AND IT WAS  
11 TIMELY FILED, THIS CONVERSION COMPLAINT HAS BEEN IN THE  
12 COMPLAINT SINCE 2006.

13 THE COURT: [TPW-L] THERE WAS SOME EVIDENCE, I DON'T  
14 SEE IT QUITE YET IF THERE IS SOME EVIDENCE OF THAT THEN I'LL  
15 CONSIDER [TPWEUFG] THIS SO I'LL RE ADVISE [THEUT] AT THE END  
16 OF THE CASE IF YOU HEAR SOME EVIDENCE THAT THE CLAIM IS  
17 BEYOND THE STATUTE OF LIMITATIONS BUT I DON'T SEE IT NOW.

18 MS. IBARRA: IT'S BEEN THERE SINCE 2006 IT WAS IN  
19 THE ORIGINAL COMPLAINT.

20 THE COURT: OH NO WHAT I'M SAYING IS HE'LL LET ME  
21 KNOW AT THE END OF THE CASE.

22 MS. IBARRA: I UNDERSTAND.

23 THE COURT: THIS IS THE EVIDENCE THAT SUPPORTS IT.

24 MR. STEIN: RIGHT, IN OTHER WORDS WE AGREE IF THERE  
25 WAS SOME MISAPPROPRIATION A WEEK BEFORE THEY FILED THE  
26 COMPLAINT THAT'S DIFFERENT, BUT WHAT WE'RE DEALING WITH IS  
27 TRADE SECRETS HERE, WE'RE NOT TALKING ABOUT A BREACH OF DUTY,  
28 WE'RE NOT TALKING ABOUT SOME CONVERSION TIGHT CONCEPT WHERE

1 HE WALKED AWAY FROM IT, WE'RE TALKING ABOUT WHETHER THERE IS  
2 A TRADE SECRET, THESE WERE SITTING ON THE COMPUTER FOR FIVE  
3 SOLID YEARS SO HOW CAN THEY BE A TRADE SECRET, THAT'S WHY  
4 THIS IS A STATUTE OF LIMITATIONS QUESTION WHEN A CONVERSION  
5 IS NOT A STATUTE OF LIMITATIONS QUESTION.

6 THE COURT: DID YOU PUT STATUTE OF LIMITATIONS IN  
7 HERE.

8 MR. STEIN: YES.

9 THE COURT: MAYBE YOU DID, I'M SURE YOU DID I JUST  
10 DON'T SEE IT.

11 MS. IBARRA: GENERICALLY YOUR HONOR.

12 MR. STEIN: YES THE 11TH DEFENSE.

13 THE COURT: YEAH.

14 MR. STEIN: ALSO WE NEED A SPECIAL INSTRUCTION FOR  
15 THE BUSINESS JUDGMENT RULE YOUR HONOR.

16 THE COURT: I'M I'M SURE WE WILL AND WE'LL DO IT BUT  
17 RIGHT NOW WE'RE GOING TAKE A BREAK, 15 MINUTES.

18 (BREAK TAKEN.) 03:22 PM TO 03:39 PM.

19 THE COURT: MR. STEIN STEPPED OUT.

20 MR. FORDYCE: YOUR HONOR HE DID STEP OUT.

21 THE COURT: OKAY I'LL WAIT FOR HIM.

22 MR. FORDYCE: THANK YOU. MUCH APPRECIATED.

23 THE COURT: GABRIELINO-TONGVA TRIBE VERSUS STEIN, B  
24 C36 ONE, 307. I THINK WE'VE MOVED ON TO BREACH OF  
25 CONFIDENCE. DO YOU HAVE THE JURY INSTRUCTION THAT DEALS WITH  
26 THAT ONE.

27 MR. STEIN: YOUR HONOR HOW IS THAT DIFFERENT FROM  
28 BREACH OF FIDUCIARY DUTY.

1 THE COURT: WELL BREACH OF FIDUCIARY DUTY WAS BASED  
2 ON BREACH OF LOYALTY, I'M SURE BREACH OF CONFIDENCE, WAS  
3 THERE SOMETHING DISCLOSED THAT --.

4 MS. IBARRA: YES.

5 MR. STEIN: ONCE AGAIN WE HAVE A TRADE SECRET CAUSE  
6 OF ACTION AS WELL. SO ONCE AGAIN, WHAT WE'RE RUNNING INTO  
7 IT --.

8 THE COURT: WELL LET HER TALK FIRST BECAUSE I'M  
9 TRYING TO GET FROM HER WHAT --.

10 MS. IBARRA: SO THE FACTUAL BACKGROUND FOR THAT  
11 WOULD BE THE DOCUMENT THAT ACTUALLY THE COURT HAS ALREADY  
12 REVIEWED BUT THE JURY HASN'T, THAT MEMO THAT WAS GIVEN TO THE  
13 LIBRA INVESTORS ABOUT YOU KNOW DESCRIPTION OF EACH AND EVERY  
14 ONE OF THE TRIBAL COUNCIL PEOPLE AND YOU KNOW THEIR ALLEGED  
15 ISSUES BY MR. STEIN, SO THAT WOULD BE ONE EXAMPLE OF THE  
16 CONFIDENTIAL INFORMATION THAT WAS SHARED WITH OTHER PEOPLE.

17 THE COURT: I DIDN'T COMPLETELY READ IT.

18 MS. IBARRA: RIGHT.

19 MR. STEIN: IT NEVER GOT INTO EVIDENCE, IT IS NOT IN  
20 EVIDENCE. THEY'RE GOING TO HAVE TO PUT IT INTO EVIDENCE.

21 THE COURT: WHAT CONFIDENTIAL INFORMATION IS IN  
22 THERE, I REMEMBER THERE WAS SOMETHING ABOUT SYRIA OR  
23 SOMETHING.

24 MS. IBARRA: THERE WAS THAT ABOUT MR. DUNLAP BUT  
25 THERE WAS CONFIDENTIAL INFORMATION ABOUT EACH AND EVERY ONE  
26 OF THIS OF THE COUNCIL PEOPLE, ONE OF THEM WAS DESCRIBED AS A  
27 DRUNK, THE OTHER ONE -- MRS. CARMELO IS DESCRIBED AS AN EARTH  
28 LADY OR SOMETHING LIKE THAT.

1 MR. STEIN: EARTH MOTHER.

2 MS. IBARRA: EARTH MOTHER, THAT'S RIGHT SO THERE WAS  
3 [SKWROUFT] DESCRIPTIVE DEROGATORY [TPO\*BGS] INFORMATION ABOUT  
4 EACH OF THE TRIBAL COUNCIL PEOPLE WHICH WAS NOT NECESSARILY  
5 TRUE BUT IT WAS PREMISED ON INFORMATION THAT HE RECEIVED AS  
6 AN EXECUTIVE OF THE TRIBE AND IT WAS CONFIDENTIAL.

7 THE COURT: SO WHAT JURY INSTRUCTION ARE YOU --.

8 MR. STEIN: SHE HAS NONE.

9 MS. IBARRA: WELL THERE'S NO -- THERE'S NO C.A.C.I.  
10 RULE THAT OR C.A.C.I. SAMPLE ONE THAT [TKOFRZ] WITH SO I  
11 COULD PREPARE A SPECIAL ONE ON BREACH OF CONFIDENCE.

12 THE COURT: WELL THERE HAS TO BE A [KA\*UFRZ] THAT  
13 YOU HAVE -- THERE'S A CAUSE OF ACTION FOR BREACH OF  
14 CONFIDENCE THAT SEPARATE AND APART FROM THE ATTORNEYS  
15 OBLIGATION.

16 MR. STEIN: YOUR HONOR IF I MAY.

17 THE COURT: UH-HUH.

18 MR. STEIN: ONCE YOU SAY TO STEIN -- ONCE YOU SAY  
19 THAT THERE'S A BREACH OF FIDUCIARY DUTY, A BREACH OF  
20 CONFIDENCE WOULD BE WITHIN THAT FIDUCIARY DUTY, LIKEWISE THE  
21 AFFIRMATIVE DEFENSE OF A BUSINESS JUDGMENT RULE WOULD APPLY.  
22 THERE'S NO BREACH OF CONFIDENCE, IT'S IN THE ABSENCE OF A  
23 FIDUCIARY DUTY THAT YOU MIGHT HAVE A BREACH OF CONFIDENCE BUT  
24 EVEN THEN THAT'S A MISAPPROPRIATION OF TRADE SECRET SO YOU  
25 HAVE THIS DUPLICATIVE PLEADING SUCH JURY INSTRUCTIONS.

26 THE COURT: WELL SHE'S NOT SAYING A YOU DISCLOSED  
27 PERSONAL PRIVATE INFORMATION ABOUT \*\* THAT YOU EVER OBTAINED  
28 IN YOUR ROLE AS EITHER LAWYER OR OFFICER, I'M NOT SURE QUITE

1 WHICH ONE I WOULD SAY BOTH BUT -- BUT IF THERE'S NOTHING TO  
2 DEAL WITH TRADE SECRET AT LEAST THAT'S WHAT I HEARD HER SAY  
3 BUT I'M STILL TRYING TO FIGURE OUT HOW THAT'S INDEPENDENT OF  
4 THE BREACH OF FIDUCIARY DUTY OR EITHER THE OFFICER OR THE  
5 LAWYER.

6 MR. STEIN: RIGHT.

7 THE COURT: I MEAN IF YOU HAVE A SEPARATE CAUSE OF  
8 ACTION IT'S NOT IN THE CASE [AOE] AND YOU WANT TO LOOK  
9 THROUGH THE C.A.C.I. LIEU THAT SAYS THE CAUSE OF ACTION FOR  
10 THE BREACH OF CONFIDENCE HAS THE FOLLOWING HE ELEMENTS.

11 MS. IBARRA: RIGHT THIS IS ONE OF THE [KA\*U] [-Z]  
12 THAT I INHERENT HERITAGE-D IN 2006 SO I WILL TRY TO [KRE] RE  
13 [KWRAOEU] [THAEUT] WHAT THE THOUGHT PATTERN IS.

14 THE COURT: BECAUSE IF THERE IS NO SUCH CAUSE OF  
15 ACTION --.

16 MS. IBARRA: AND IF IT'S DUPLICATIVE OF SOMETHING  
17 THAT -- THEN I DON'T --.

18 THE COURT: YOU CAN DISMISS IT OR YOU KNOW -- IF IT  
19 TURNS OUT THERE'S NO SUCH CAUSE OF ACTION INDEPENDENT OF  
20 ATTORNEY OR OFFICER, THEN IT MAY END UP IN A NONSUIT  
21 SITUATION.

22 MS. IBARRA: SO THIS IS SOMETHING THAT -- I NEED TO  
23 CLARIFY THIS.

24 THE COURT: ALL RIGHT SO I'M GOING TO HOLD OFF ON  
25 THAT. INTENTIONAL [EUPT] [TPAERPBS] WITH ECONOMIC RELATIONS  
26 IS THE NEXT ONE.

27 THE CLERK: WHAT'S THE NUMBER YOUR HONOR.

28 THE COURT: IT'S THE FIFTH CAUSE OF ACTION

1 INTENTIONAL INTERFERENCE WITH ECONOMIC RELATIONS.

2 MS. IBARRA: THAT'S THE 22 '01 AND SO WE'RE  
3 REQUESTING 22 '01 AND 22 '04.

4 THE COURT: 22 '01.

5 MS. IBARRA: AND THE SPECIFIC ECONOMIC RELATIONSHIP  
6 THAT WE ALLEGE IS THE LIBRA AGREEMENT, THE RELATIONSHIP WITH  
7 THE LIBRA INVESTORS.

8 THE COURT: OKAY. ALL RIGHT I'LL GIVE THAT ONE.  
9 ARE THERE ANY OTHER CONNECTION TO THAT. OH SHOULD SHOULD  
10 BE -- WAIT A MINUTE. WELL.

11 MS. IBARRA: 22 '01.

12 THE COURT: RIGHT AND 22 '02 IS INTENTIONAL  
13 INTERFERENCE WITH PROCESS ECONOMIC RELATIONS.

14 MR. STEIN: THAT'S WHEN THERE IS NO CONTRACT SO  
15 THEY'RE NOT SAYING THAT THERE WAS SOMEBODY THAT -- THEY'RE  
16 SAYING THAT THERE WAS A LIBRA CONTRACT AND THAT'S WHERE THE  
17 INTERFERENCE OCCURRED.

18 THE COURT: WAS THERE ANY FUTURE ECONOMIC GAIN TO BE  
19 HAD FROM LIBRA.

20 MS. IBARRA: [KWRAES] THERE WAS, THERE WAS A PROMISE  
21 OF UP TO 22 MILLION AND THEN THERE WAS A SPECIFIC 2.1 MILLION  
22 THAT WAS THE FIRST TRENCH SO THE FUTURE ECONOMIC PROCESS  
23 RESPECT WAS THE 22.

24 THE COURT: WELL WHAT DID YOU ALLEGE THOUGH, WELL  
25 YOU HAVE TWO DIFFERENT ONES, YOU HAVE INTENTIONAL  
26 INTERFERENCE WITH ECONOMIC RELATIONSHIPS AND THEN THE SIXTH  
27 CAUSE OF ACTION NEGLIGENT INTERFERENCE, LET'S SEE WHAT HE  
28 ALLEGE, DID YOU ALLEGE PERSPECTIVE OR JUST INTENTIONAL

1 INTERFERENCE WITH CONTRACTUAL RELATIONS. IT SAYS WITH  
2 ECONOMIC RELATIONSHIPS.

3 MR. STEIN: AND [W\*EPB] ONCE AGAIN SHE CITE \$2  
4 DIFFERENT THINGS, THE 2.15 MILLION AND THEN UP TO 21 MILLION,  
5 THOSE ARE BOTH IN THE LIBRA AGREEMENT SO THOSE ARE BOTH  
6 WITHIN A CONTRACT SO SHE WOULD SAY INTENTIONAL INTERFERENCE  
7 WITH ECONOMIC RELATIONS NOT WITH SOMEBODY THAT DOESN'T HAVE A  
8 CONTRACT.

9 MS. IBARRA: SO THE SAME FACTUAL ALLEGATIONS I'M  
10 SURE ARE CONTAINED FOR BOTH OF THOSE -- FOR BOTH OF THOSE AND  
11 THAT AGAIN IS SOMETHING THAT'S BEEN IN THERE, IF THAT IS NOT  
12 LEGALLY WELL PLED THAT'S BEEN THERE FOR 10 YEARS.

13 MR. STEIN: SO IS THIS THE FIFTH CAUSE OF ACTION.

14 THE COURT: WELL IT SAYS WITH FULL KNOWLEDGE OF SUCH  
15 ADVANTAGEOUS BUSINESS RELATIONSHIPS. WELL LET'S SEE, AL ALL  
16 MATERIAL TIMES DEFENDANTS WERE AWARE THAT THE TRIBE HAD OVER  
17 A PERIOD OF TIME AND AT A CONSIDERABLE EXPENDITURE OF TIME,  
18 EFFORT AND MONEY H DEVELOPED ADVANTAGE HUSBAND BUSINESS  
19 RELATIONSHIPS WITH CONSULTANTS, WITH INVESTORS AND WITH  
20 FINANCIAL INSTITUTIONS. THE BUSINESS RELATIONSHIP BETWEEN  
21 THE TRIBE AND IT'S CONSULTANTS AND INVESTORS WAS SUCH THAT IT  
22 WILL NORMALLY CONTINUE UNLESS INTERFERED WITH. DEFENDANTS --  
23 NEXT PARAGRAPH, DEFENDANTS ENGAGED IN THE CONDUCT HEREIN  
24 ALLEGED IN ORDER TO DELAY AND INTERRUPT THE LAYS TIE PRIME  
25 INVESTOR [HEZ], DID I SAY INTERRUPT [-DZ] HIS RELATIONSHIP  
26 WITH BANKS SO THE TRIBE [CON|COULD NOT] ACCESS MONEY OR PAY  
27 ITS BILLS AND DISRUPT ITS RELATIONSHIPS WITH CONSULTANTS IN  
28 AN EFFORT TO EXTORT THE TRIBE [TPAO] REHIRING STEIN. THE



1 PROXIMATE RESULT THE TRIBES THE SAME DAMAGE \*\* INCLUDED A  
2 LOSS OF AN OPPORTUNITY TO DEVELOP A CASINO PROJECT. SO THAT  
3 DESCRIBES MORE THAN JUST A CONTRACT.

4 MS. IBARRA: RIGHT. IT ALSO DESCRIBES --.

5 THE COURT: BUT IT'S NOT --.

6 MS. IBARRA: THE RELATIONSHIP WITH THE FINANCIAL  
7 INSTITUTIONS, THERE'S ALSO ALLEGATION AND THERE'S E-MAILS  
8 FROM MR. STEIN TO ALL THE BANKS THAT HELD THE TRIBES MONEY SO  
9 THAT'S ALSO A PART OF THE INTENTIONAL INTERFERENCE WAS THAT  
10 HE -- AFTER HE -- YOU KNOW AT THIS POINT HE'S SAYING HE  
11 WAS -- MR. STEIN QUIT IN SEPTEMBER, AFTER QUITTING, HE SENT  
12 E-MAILS TO ALL THESE INSTITUTIONS REPRESENTING HIMSELF AS  
13 STILL THE CEO OF THE TRIBE AND SAYING THAT THE TRIBAL COUNCIL  
14 PEOPLE HAD STOLEN THE TRIBES MONEY AND THEREFORE, THE BANKS  
15 HAD A RESPONSIBILITY TO FREEZE THE MONEY. EVENTUALLY THE  
16 BANKS JUST SAID JUST TAKE YOUR BUSINESS ELSEWHERE BUT THAT  
17 WAS THE --.

18 THE COURT: YEAH.

19 MS. IBARRA: THAT WAS THE ONE.

20 THE COURT: ONE WAY OF DEALING IT.

21 MS. IBARRA: YEAH THAT WAS ONE WAY OF DEALING WITH  
22 IT YES.

23 MR. STEIN: AND THEY IN FACT GOT ALL THEIR MONEY SO  
24 WHAT YOU HAVE YOUR HONOR.

25 MS. IBARRA: SO THERE'S TWO THINGS.

26 THE COURT: LET HER TALK OKAY.

27 MR. STEIN: THERE ARE TWO VERY DIFFERENT [KA\*U]

28 [-Z], WITH DIFFERENT [HRAO\*EL] LEGAL STANDARDS H I'VE

1 LITIGATE [EUD] THEM A LOT, ONE IS WHEN YOU HAVE A CONTRACT,  
2 IN WHICH CASE ALL YOU HAVE TO DO IS SHOW THE INTERFERENCE OF  
3 THE CONTRACT AND THE C.A.C.I. INSTRUCTION [R-TZ] VERY  
4 [KPHRAO\*ET] COMPLETE, SEPARATELY IT'S WHEN THERE'S NO  
5 CONTRACT, IT'S SORT OF WHEN IT'S SITTING OUT THERE AND YOU  
6 SAID OKAY EDGAR PEREZ IS A DRUNK AND ED PERCENT CAN'T BE A  
7 JOB [PWAOUZ] EVERYBODY THINK HE'S A DRUNK, THAT WOULD BE WHEN  
8 YOU DON'T HAVE A CONTRACT. WHEN THEY'RE ALLEGE WILLING IS  
9 THEY HAD A CONTRACT WITH [WELS] [WELS] FOR THEIR MONEY AND  
10 WITH LIBRA INVESTOR THAT'S MIGHT HAVE PUT IN MORE MONEY.  
11 THAT IS ONE TYPE OF INTERFERENCE OF WHICH IT CAN EITHER BE  
12 INTENTIONAL OR NEGLIGENT BUT WHAT SHE'S TRYING TO DO IS  
13 STRETCH IT TO OTHER TYPES OF INTERFERENCE AND THAT'S HE  
14 ESPECIALLY INAPPROPRIATE IN LIGHT OF THE EVIDENCE THAT THIS  
15 REFUSED TO PAY ANY OF THE CASINO PROJECT EXCEPTIONS. SO IF  
16 THEY HAD POSSIBILITIES ARE GOING FORWARD WITH THE CASINO  
17 PROJECT THEY REFUSED TO PAY ANY OF THEM, THEY THE MONEY.

18 MS. IBARRA: SO --.

19 THE COURT: WELL OKAY. SO THE QUESTION IS -- I  
20 THINK WHAT YOU'RE SAYING IS THERE'S CLEARLY -- NOT CLEAR  
21 CLEARLY BUT IT SEEMS ON THE BASIS OF PROFFER OF THE EVIDENCE  
22 THAT AN INSTRUCTION ON THE.

23 MS. IBARRA: INN [TOEPBGS] AT [TPAORPBS].

24 THE COURT: [SAOEURPT] [STPOERPT] [PRO\*EPLT]  
25 ECONOMIC [REULGS].

26 MS. IBARRA: THAT WAS MY POINT [URB].

27 MR. STEIN: AND MY POINT IS YES TO CONTRACT, NO TO  
28 PROSPECTIVE ECONOMIC.

1 THE COURT: WASN'T THERE GOING TO BE FUTURE ECONOMIC  
2 [ABG] TILL THOUGH \*\* WASN'T THAT ANTICIPATED.

3 MR. STEIN: THAT'S UNDER CONTRACT, ONCE AGAIN THAT  
4 WAS AN LIBRA CONTRACT F THEY DIDN'T HAVE A CONTRACT WITH AN  
5 INVESTOR YOU'D BE RIGHT BUT THEY ALREADY HAD THE CONTRACT  
6 WITH THE INVESTOR WHO HAD COMPLETE DISCRETION UNDER THE  
7 CONTRACT SO THEY CAN SAY AH WELL SOMEHOW THIS SURVIVES  
8 COMPLETE DISCRETION, IT DOESN'T BUT THAT'S A QUESTION OF  
9 PROOF.

10 THE COURT: BUT ONCE THAT FELL THREW, WAS THERE  
11 FURTHER [EURPBT] [STPHAOERPBS] WITH OTHER INVESTORS.

12 MR. STEIN: NO NO ONCE AGAIN IT DIDN'T FALL THROUGH  
13 THEY HAD A CONTRACT WITH THE FULL 21 MILLION.

14 THE COURT: WELL BECAUSE THEY ON THE FUNDED  
15 2,000,000, RIGHT.

16 MR. STEIN: BUT THE PERSPECTIVE, IF YOU HAVE A  
17 CONTRACT THEN YOU CAN INTERFERE WITH THAT CONTRACT AND SAY OH  
18 WE DIDN'T [TKPW\*EU] GET ANYMORE MONEY [HURPD] THE CONTRACT  
19 BUT YOU SAY SAY THERE'S FUTURE STUFF URGED THE CONTRACT,  
20 THAT'S WITHIN THE CAUSE OF ACTION.

21 MS. IBARRA: SO FIVE IS THE LIBRA CONTRACT FOR SURE  
22 AND ALSO SOME OF THE BANKING CONTRACTS BECAUSE THOSE WERE  
23 CONTRACTUAL RELATIONSHIPS AND THEN SIX WILLS THE NEGLIGENT  
24 INTERFERENCE WITH ECONOMIC RELATIONSHIPS WOULD BE --.

25 THE COURT: RIGHT BUT MY QUESTION IS WHAT ABOUT  
26 PROSPECTIVE ECONOMIC.

27 MR. STEIN: SHE DOESN'T HAVE A CAUSE OF ACTION FOR  
28 THAT, YOUR HONOR. SHE NEEDED FOUR CAUSES OF ACTION, I OBJECT

1 TENSION AL AND NEGLIGENT TO THE CONTRACTS, INTENTIONAL,  
2 NEGLIGENT FOR PROSPECTIVE, SHE'S ONLY GOT TWO CAUSES OF  
3 ACTION.

4 THE COURT: NEGLIGENT -- BUT THE WAY IT'S CAPTIONED  
5 WITH NEGLIGENT [EUPT] [TPAOERPBS] WITH ECONOMIC RELATIONSHIPS  
6 NOT BE CONTRACT ALTHOUGH --.

7 MR. STEIN: THEN I WOULD LOVE TO HEAR THAT BECAUSE  
8 THEN THEY HAVE NO CAUSE OF ACTION FOR LIBRA, THEY NEED FOUR  
9 [TKA\*UZ] [-Z], THEY'VE [ORPBL] STATED TWO, IF THESE TWO ARE  
10 ONLY FOR PERSPECTIVE THAT SOUNDS GREAT TO ME THAT JUST MEANS  
11 THEY CAN'T SUE FOR [HRAO\*B].

12 MS. IBARRA: I'M NOT UNDERSTANDING YOUR ARGUMENT  
13 COUNSEL, SO THERE IS -- I THINK WE'RE -- I THINK EVERYBODY IS  
14 IN AGREEMENT THAT AS TO THE CAUSE OF ACTION FOR INTENTIONAL  
15 INTERFERENCE THAT THE LIBRA AGREEMENT COMES WITHIN [THARBGS]  
16 FOR THE NEGLIGENT INTERFERENCE.

17 MR. STEIN: IT DOESN'T THOUGH T DOESN'T SAY THE  
18 LIBRA CONTRACT.

19 THE COURT: IT SAYS INVESTORS, IT'S INVESTORS BANKS  
20 AND CONSULTANTS, I DON'T KNOW WHAT THE CONSTRUCTION [TAPBTS],  
21 WHO ARE THE CONSULTANTS.

22 MR. STEIN: RIGHT BUT IT DOESN'T SAY THE LIBRA  
23 AGREEMENT, IT SAYS --.

24 THE COURT: IT DOESN'T HAVE TO SAY LIBRA AGREEMENT  
25 THEY ARE THE INVESTORS.

26 MS. IBARRA: THEY'RE THE ONLY INVESTORS AT THAT  
27 POINT AND EVER SINCE OR BEFORE.

28 THE COURT: SO 22 '01 I'LL GIVE, 22 '02.

1 MS. IBARRA: 22 '02.

2 THE COURT: IT WASN'T SEPARATELY PLEAD IT'S NOT  
3 CLEAR TO ME IF IT FALLS WITHIN THAT F THE EVIDENCE SHOWS THAT  
4 IT DOES I'LL RECONSIDER.

5 MS. IBARRA: AND ALSO --.

6 THE COURT: 22 '04 I'LL GIVE.

7 MS. IBARRA: THERE'S ALSO BEEN A LAWSUIT OF CASE LAW  
8 YOUR HONOR IN THIS AREA OF LAW ON TWO 206 [ #\* ] 206.

9 MR. STEIN: OKAY YOUR HONOR 220 FOUR IS WRONG.

10 THE COURT: OH I'M SORRY YOU'RE RIGHT, IT'S NOT 22  
11 '04.

12 MS. IBARRA: IT'S 22 '01.

13 THE COURT: 22 '01.

14 MS. IBARRA: IS THE TENSION [TPAOERPBS] [SKPEURBGS]  
15 THEN THERE SHOULD BE A COP FEET.

16 THE COURT: FOR NEGLIGENCE.

17 MR. STEIN: BUT WITH CONTRACTUAL RELATIONS. ONCE  
18 AGAIN THERE ARE FOUR CAUSES OF ACTION, SHE STATES TWO \*\*.

19 MS. IBARRA: WELL THE PROBLEM IS IT'S NOT IN  
20 C.A.C.I. ANY MORE.

21 MR. FORDYCE: IT'S NOT.

22 MS. IBARRA: IT'S NOT IN C.A.C.I., IT'S WHAT IS  
23 CAPTIONED IN THIS, WHICH IS WHAT WAS STATED IN 2006 IS NO  
24 LONGER IN C.A.C.I..

25 THE COURT: OH I SEE.

26 MS. IBARRA: SO THERE'S A POSSIBILITY THAT  
27 [STKWEPBTS] -- I MEAN IT'S BEEN 10 YEARS THAT THAT CAUSES OF  
28 ACTION.

1 THE COURT: HAS NOT HE LIMB GATED.

2 MS. IBARRA: (DITTO) IN THE INTERVENING YEARS  
3 BECAUSE THERE HAS BEEN A LOT OF ACTIONS IN THOSE CAUSE OF  
4 ACTION [UZ].

5 THE COURT: WELL WHY DON'T HAD YOU.

6 MS. IBARRA: I WILL DO RESEARCH TO SEE IF IT STILL  
7 EXISTS.

8 MR. STEIN: WHAT I BELIEVE IS THE CASE YOUR HONOR IS  
9 22 '01 IS FOR INTENTIONAL, NEGLIGENT YOU WOULD JUST GIVE 220  
10 ONE BUT YOU WOULD MAKE CHANGES FOR NEGLIGENT.

11 THE COURT: I DON'T KNOW BECAUSE IF THEY ELIMINATED  
12 IT ALL TOGETHER, MAYBE THE CAUSE OF ACTION DOESN'T EXIST, I  
13 DON'T KNOW. SHE'S GOING TO DO THE RESEARCH OF IT BECAUSE  
14 RIGHT NOW IT'S IN 220 ONE.

15 MS. IBARRA: RIGHT BECAUSE IT DOESN'T [PHA\*EUPBLG]  
16 MAKE ACCEPTS THAT IT WOULD BE IN C.A.C.I..

17 THE COURT: THERE IS NEGLIGENT INTERFERENCE WITH  
18 PROSPECTIVE ECONOMIC, BUT THAT'S NOT HOW YOU TITLED, YOU JUST  
19 [T\*] SAID NEGLIGENT INTERFERENCE [W\*EBG] RICH'S.

20 MS. IBARRA: RIGHT SO 220 FOUR [WAOF] TO BE A PRO  
21 PECK [SPEUF] ECONOMIC RELATIONSHIP, SO NOT AN EXISTING  
22 CONTRACT IS MY UNDERSTANDING OF THAT CAUSE OF ACTION.

23 MR. FORDYCE: YEAH IN FACT ONE OF THE AUTHORITIES  
24 CITE -- ONE OF THE AUTHORITIES IN C.A.C.I. ACTUALLY MAKES  
25 THAT DISTINCTION.

26 MS. IBARRA: YEAH.

27 MR. FORDYCE: AT LEAST TOWARDS [EUP] TENSION AL  
28 INTERFERENCE WITH PERSPECTIVE AND CONTRACTS THE TORTS REMAIN

1     DISTINCT.

2             THE COURT:   WELL LOOK AT THIS, PARAGRAPH 8 EIGHT ON  
3     THE NEGLIGENT CAUSE OF ACTION.   WITH FULL KNOWLEDGE OF SUCH  
4     ADVANTAGEOUS BUSINESS RELATIONSHIPS INCLUDING THE  
5     SPECIFICALLY SIDE [TAOE] OF THE TRIBES CONSULTANTS BANKS AND  
6     INVESTORS AND WITH THE INTENT TO WRONGFULLY INTERFERE WITH  
7     SUCH RELATIONSHIPS, THE DEFENDANTS NEGLIGENTLY ENGAGED IN THE  
8     CONDUCT, SO YOU'VE GOT [EUP] TENSION AT ALLEGATION AND  
9     NEGLIGENT ALLEGATIONS IN THE SAME -- IN THE SAME CAUSE OF  
10    ACTION AND THEN YOU USE IN PARAGRAPH '89 AS A PROXIMATE  
11    RESULT OF THE WRONGFUL CONDUCT.

12            MR. FORDYCE:   IT SOUNDS LIKE IT'S BACK TO NEGLIGENT.

13            THE COURT:   IT'S BACK TO NEGLIGENT.

14            MR. STEIN:   AND YOUR HONOR TO SHOW WRONGDOING  
15    INDEPENDENT OF THE INTERFERENCE WITH WITH RESPECT TO  
16    RELATIONS.

17            THE COURT:   I'M SORRY.

18            MR. STEIN:   IF THERE'S NO CONTRACT HUH A WRONGDOING  
19    ELEMENT THAT'S INDEPENDENT OF THE INTERFERENCE AND THAT'S NOT  
20    ALLEGED HERE EITHER SO IT SEEMS TO ME THAT WE JUST ARE  
21    DEALING WITH 22 '01.

22            THE COURT:   THAT'S WHAT IT LOOKS LIKE.   WELL YOU  
23    HAVE TO CONVENTION ME OTHERWISE BUT FOR NOW IT'S 22 '01.

24            MS. IBARRA:   RIGHT, I UNDERSTAND.

25            THE COURT:   SO BREACH OF CONTRACT, YOU HAVE A LOT OF  
26    INSTRUCTIONS ON BREACH OF CONTRACT.

27            MS. IBARRA:   YES.

28            THE COURT:   WHERE IS THAT LOCATED.

1 MS. IBARRA: 300.

2 MR. FORDYCE: AND SECTIONS FOR US YOUR HONOR S [-Z]  
3 AND FOUR, CRANE AND [ST\*PLD], YOUR HONOR LET ME ASK THE COURT  
4 IF WE CAN JUST STEP BACK FROM THE PURSUIT OF INDIVIDUAL  
5 INSTRUCTIONS.

6 THE COURT: SURE.

7 MR. STEIN: AGAIN CRANE AND SMDC HAVE THEIR OWN  
8 BREACH OF CONTRACT, THEY ARE NOW CLAIMING THEY HAVE A BOOK,  
9 RIGHT.

10 THE COURT: RIGHT.

11 MR. STEIN: SHOULD WE MAYBE GO TO THE CRANE OR SMDC  
12 CONTRACT MAYBE A LIST AND THEN THAT SAME LIST THEY WOULD DO  
13 THEIR VERSION OF.

14 THE COURT: YEAH I MEAN SURE. I THINK IT WOULD BE  
15 THE SAME INSTRUCTIONS PRETTY MUCH.

16 MR. STEIN: RIGHT, SO HERE'S THE INSTRUCTIONS ONE AT  
17 A TIME, THEY'RE IN OUR. THEY'RE IN OUR PACKET, BREACH OF  
18 CONTRACT, SECTION 3 OF THE NOTEBOOK.

19 THE COURT: SECTION 3, HOLD ON.

20 MR. STEIN: I JUST WANT TO DOUBLE THROUGH TO MAKE  
21 SURE YOU GOT THERE AND WHEN YOU GET THROUGH IT WE'LL GO BINGO  
22 WHEN YOU GET TO THE RIGHT PAGE.

23 THE COURT: OKAY BREACH OF CONTRACT, 300.

24 MR. STEIN: SO AND THEN ONCE AGAIN THINKING ANYTHING  
25 WE SAY FOR US WOULD ALSO BE OKAY FOR MS. IBARRA AND ALSO BE  
26 OKAY FOR CRANE.

27 MS. IBARRA: RIGHT EXCEPT THAT JUST  
28 [COUNSEL'S | COUNSELS] INSTRUCTIONS HAVE THE NAMES OF THE



1 PARTIES IN THERE AND MINE DO AS WELL SO THAT MEANS THAT WE  
2 WOULD HAVE TO SUBMIT LIKE YOU KNOW HOWEVER THREE OR FOUR OF  
3 THEM WITH EACH OF THE PARTIES VARIOUS NAMES.

4 MR. STEIN: YEAH. HERE'S ALSO A DIFFICULTY BEFORE  
5 WE GET STARTED ON SMDC, HER CONTRACTS KEEP TALKING ABOUT  
6 STEIN, THE CONTRACTUAL RELATIONSHIP WAS SMDC, STEIN HAD NO  
7 CONTRACT WITH GT TRIBE.

8 MS. IBARRA: OH SO MY INSTRUCTIONS SAY STEIN AND --.

9 THE COURT: OH, YOU MEAN HER FILL-INS YOU MEAN.

10 MR. STEIN: YEAH THEY ALL SAY STEIN NOT SMDC.

11 THE COURT: SO YOU NEED TO CHANGE THAT.

12 MS. IBARRA: WELL WE AL THAT THEY HAVE AN ALTEREGO  
13 RELATIONSHIP AND STEIN WAS THE ONLY AGENT FOR [STRAOEUB] I  
14 MEAN NOR SMDC.

15 MR. STEIN: SHE WANTS A DIRECTED VERDICT FROM THE  
16 COURT THAT STEIN IS THE ALTEREGO, SHE CAN'T DO THAT AND THAT  
17 IS WHY SHE'S PUTTING STEIN IN ALL HER [TREBGS] [-Z] WITHOUT  
18 SHOWING ALTEREGO.

19 THE COURT: YEAH I DON'T THINK YOU CAN DO THAT.

20 MS. IBARRA: THAT'S FINE I WILL CHANGE THEM, I WILL  
21 USE SMDC AND NOT STEIN.

22 THE COURT: THREE 10.

23 MR. STEIN: NOW OBJECT [KWRAULS] LEE THE  
24 ATTORNEY-CLIENT RELATIONSHIP WOULD BE STEIN 30 TWO LOOKS  
25 LIKE.

26 MR. STEIN: SO THE COURT IS OKAY WITH 300.

27 THE COURT: YEAH.

28 MR. STEIN: SO WE GO 300.

1 THE COURT: 30 TWO IS THE NEXT ONE [\*EUBGS] (DITTO)  
2 RIGHT.

3 THE COURT: CONTRACT FORMATION.

4 MR. STEIN: THEN 30 THREE.

5 THE COURT: [KWR\*EBGS] YES THEN ELEMENTS.

6 MR. STEIN: MY NEXT IS THREE 12 WHICH IS SUBSTANTIAL  
7 PERFORMANCE.

8 THE COURT: 30 FOUR ORAL OR WRITTEN CONTRACT TERMS.  
9 WE COULD [PROB] GLEE GIVE THAT ONE.

10 MS. IBARRA: I PREPARED THAT ONE FOR THE  
11 ATTORNEY-CLIENT RELATIONSHIP.

12 MR. STEIN: WELL YOU CAN'T YOUR HONOR BECAUSE  
13 THERE'S AN INTEGRATION CLAUSE THAT THERE ARE NO ORAL  
14 AGREEMENT IN THE SMDC AGREEMENT.

15 THE COURT: SHE'S TALKING ABOUT ATTORNEY-CLIENT.

16 MS. IBARRA: FOR ATTORNEY-CLIENT I --.

17 MR. STEIN: BUT THAT'S NOT WHAT WE'RE ON RIGHT NOW.

18 MS. IBARRA: OKAY.

19 THE COURT: WELL BUT I MEAN IF IT -- IT WILL APPLY  
20 TO SOME OTHER CAUSE OF ACTION IT'S OKAY TO GIVE SO 30 FOUR,  
21 WE'LL GIVE 30 FOUR, IMPLIED IN FACT CONTRACT.

22 MS. IBARRA: SO THAT ALSO WE FEEL GOALS TO THE  
23 ATTORNEY-CLIENT RELATIONSHIP.

24 MR. STEIN: WHAT NUMBER IS THAT.

25 THE COURT: 30 FIVE IS IMPLIED IN FACT WE'LL GIVE  
26 THOSE.

27 MR. STEIN: AND THOSE ARE FOR THE ATTORNEY-CLIENT  
28 RIGHT.

1 MS. IBARRA: YES.

2 THE COURT: 306 UNIFORM ALLEGED EYES [H-D]  
3 AGREEMENT.

4 MR. STEIN: NO THAT'S UNIFORM [A\*Z] AL [AOEULTZ]-D  
5 MEANS THERE'S NO SIGNATURE.

6 THE COURT: LET'S SEE, DEFENDANT CONTENDS THAT THE  
7 PARTY DID NOT ENTER INTO THE CONTRACT BECAUSE THEY HAD NOT  
8 SIGNED A FINE WRITTEN [TKPWRAO\*EPLT] AGREEMENT TO PROBABLY  
9 [PWHROEGT] ONE THAT THE PARTIES UNDERSTOOD AND AGREED TO THE  
10 TERMS OF [TPRAOEUPLT] AND TWO THAT THE PARTY FREED TO BE  
11 POUND BEFORE A WRITTEN AGREEMENT WAS COMPLETED AND SIGNED.

12 MR. STEIN: THAT'S NOT WHAT HAPPENED, THERE WAS NO  
13 UNSIGNED WRITTEN AGREEMENT.

14 THE COURT: YEAH I DON'T THINK THAT SOUND RIGHT.

15 MS. IBARRA: YEAH THERE'S NO UNSIGNED AGREEMENT.

16 THE COURT: YEAH I AGREE. 307 CONTRACT FORMATION  
17 OFFER.

18 MR. STEIN: NO.

19 MS. IBARRA: NO.

20 MR. STEIN: WE DON'T HAVE ANY OFFER ACCEPTANCE.

21 THE COURT: YOU HAVE DON'T HAVE THOSE KINDS OF  
22 ISSUES OFFER ACCEPTANCE, 308 [REFR] VAGUE AND AMBIGUOUS  
23 OFFER.

24 MR. STEIN: WE HAVE OUR OWN ATTORNEY-CLIENT -- CAN  
25 WE PULL UP THE ATTORNEY-CLIENT.

26 THE COURT: OH YOU HAVE SOMETHING IN CONNECTION.

27 MR. STEIN: YEAH LET ME MENTION, THAT'S WHY IT'S  
28 GETTING [CON|COULD NOT] [TPAUGZ]-G HERE THAT'S WHY I'M

1 GETTING CONCERNED ABOUT USING 340 FOUR AND 30 A- FIVE [SO\*]  
2 ARE [PEUR] [H\*] EX POLICE [ET] LEE PREPPED [AOE] [-PBT] SMDC  
3 AGREEMENT IN OTHER WORDS THERE'S A ATTORNEY-CLIENT  
4 RELATIONSHIP \*\* THAT REQUIRE CONSENT, IN OTHER WORDS YOU  
5 CAN'T HAVE AN ATTORNEY-CLIENT CONTRACT WITHOUT CONSENT TO THE  
6 PARTIES AND THERE'S --.

7 MS. IBARRA: YOUR HONOR.

8 THE COURT: YEAH.

9 MR. STEIN: AND SO WHAT HAPPENS IS IF WE CAN KEEP  
10 ATTORNEY-CLIENT INSTRUCTION ACCEPT THAT'S A VERY DEEP BOWL OF  
11 WORMS AND IF 30 FOUR AND 505 IS APPROPRIATE WE MIGHT MAC A  
12 NOTE TO OURSELVES SINCE YOU'RE LEAVING THROUGH [KHR-RT] USURP  
13 [AOE] BREACH OF CONTRACT WE HAVE THREE DIFFERENT [PWO\*BGZ]  
14 WHICH HAVE TO HAVE A BREACH OF CONTRACT ACTION, NONE OF THEM  
15 WOULD HAVE ORAL AGREEMENTS BECAUSE THERE WAS NO CRANE  
16 AGREEMENT, ORAL AGREEMENTS WERE PROHIBITED, THERE WAS NO SMDC  
17 AGREEMENT ORAL AGREEMENTS ARE PRO [THEUB]-D THERE WAS NO EM-  
18 EMPLOYED IN FACT THAT WAS PROHIBITED BECAUSE OF THE  
19 INTEGRATION CLAW [-Z], THESE ARE START BOILERPLATE FROM  
20 CONTRACTS THAT PROHIBIT 30 FOUR AND 5030 FIVE BEING GIVEN  
21 OTHER THAN THE ATTORNEY-CLIENT.

22 MS. IBARRA: HER HONOR AS MR. STEIN POINT OUT THE  
23 SMDC AGREEMENT IS BY SMDC AGREEMENT NOT BY MR. STEIN SO  
24 OBVIOUSLY WHEN WE'RE TALKING ABOUT IMPLIED IN FACT CONTRACTS  
25 AND ORDER OF WRITTEN CONTRACT TERMS IT'S BETWEEN STEIN AND  
26 THE TRIBE SO IT'S SEPARATE THAT ANY INTEGRATION CLAUSES OR  
27 DISCLAIMERS THAT APPEAR IN THE SMDC AGREEMENT SINCE IT'S A  
28 CONTRACT WITH THE INDIVIDUAL AND THE TRIBE NOT THE ENTITY AND

1 THE TRIBE.

2 MR. STEIN: BUT THE INDIVIDUAL IS THE THIRD PARTY  
3 BENEFICIARY OF THOSE EXACT CLAUSES THAT'S WHY --.

4 THE COURT: I THOUGHT YOU SAID YOU WEREN'T PARTY TO  
5 THE CONTRACT, SMDC.

6 MR. STEIN: EXCEPT THAT IT HAS A THIRD PARTY  
7 BENEFICIARY THAT MENTIONED STEIN.

8 THE COURT: THEN MAYBE THEY SHOULD ALL BE GIVEN THEN  
9 E WELL ONCE AGAIN CAN WE TALK ABOUT THAT IN THE  
10 ATTORNEY-CLIENT CONTEXT BECAUSE I THINK THAT'S GOING TO BE  
11 HOPEFULLY.

12 THE COURT: I'M NOT CONFUSED ABOUT IT SO.

13 MR. STEIN: YES YOUR HONOR.

14 THE COURT: LET'S JUST KEEP GOING. 30 FOUR, 30  
15 FIVE, NO TO 306, NO TO 307, NO TO 308, [#309D] IS SEPARATED  
16 NO ISSUE [THR-RBGS] THREE 10 ACCEPTS BY EYE 31 ONE NO ISSUE  
17 THERE, THREE 12 SUBSTANTIAL PERFORMANCE.

18 MS. IBARRA: YES.

19 MR. STEIN: YES.

20 THE COURT: YES OKAY \*\*. THREE 13 MODIFICATION.

21 MR. FORDYCE: AS TO SMDC YES.

22 MR. STEIN: YEAH THERE'S NO MODIFICATION WITH CRANE  
23 BUT THERE IS WITH SMDC SO THREE 13 WOULD BE FOR SMDC.

24 MS. IBARRA: WE AND WE AGREE.

25 THE COURT: THREE 13 THEN. THREE 14 INTERPRETATION  
26 DISPUTED WORDS.

27 MS. IBARRA: WE BELIEVE THERE WILL BE SOME DISPUTED  
28 WORDS ESPECIALLY WITH REGARDS TO CRANE, THE CRANE AGREEMENT

1 BUT IN REGARDS TO SMDC PROBABLY AS WELL.

2 MR. STEIN: I --.

3 THE COURT: IT REQUIRES -- IT SAYS PLAINTIFF AND  
4 DEFENDANTS DISPUTE THE MEANING OF THE FOLLOWING WORDS IN  
5 THEIR CONTRACT I OBJECT CERTIFICATE DISPUTED TERMS SO YOU'RE  
6 GOING TO HAVE TO -- HOLD ON YOU'VE YOU'RE GOING TO HAVE TO  
7 IDENTIFY FOR THE JURY WHAT YOU ARE [TKAO\*UPLG].

8 MR. STEIN: EXACTLY YOUR HONOR THE ONLY QUESTION  
9 HERE IS THEY JUST CAN'T PAY, IT'S NOT A QUESTION OF, THEY'RE  
10 GOING TO SAY, OH WELL YOU DIDN'T [P-RPL], WELL THEY HAVE  
11 AGREEMENT -- APPROVAL AFTER APPROVAL SAYING WE ACKNOWLEDGE  
12 PERFORMANCE SO WHAT THEY'RE SAYING IS THEY WILL HAVE TO COME  
13 UP WITH DISPUTED WORDS, I WOULD LIKE TO SEE WHAT THE DISPUTED  
14 WORDS ARE.

15 THE COURT: YOU NEED TO COME UP WITH THE DISPUTED  
16 WORD.

17 MS. IBARRA: SO THE CRANE AGREEMENT, IT'S --.

18 THE COURT: I'M GOING TO RESERVE ON THIS ONE, YOU  
19 ANTICIPATE WHAT [T-RTS] GOING TO BE IF IT TURN OUT DO YOU  
20 RECOGNIZE THE TRIAL THERE ARE A COUPLE OF DISPUTED FIRMS  
21 WE'LL PUT THEM IN RIGHT NOW I'M GOING TO RE. THREE 15  
22 INTERPRETATION AND MEANING OF ORDINARY WORDS I THINK THAT  
23 SHOULD BE GIVEN. THREE 16 MEANING OF TECHNICAL WORDS. DOES  
24 YOUR CONTRACT HAVE TECHNICAL WORDS. YOU HAVE SHOULD ASSUME  
25 THE PARTIES USED TECHNICAL WORDS TO USUALLY GIVEN TO MEMBER  
26 BY PEOPLE WHO WORK IN THAT TECHNICAL FIELD UNLESS YOU DECIDE  
27 THAT THE PARTIES CLEARLY USED THE WORDS IN A DIFFERENT SENSE.

28 MS. IBARRA: I'M NOT SURE THAT THEY'RE TECHNICAL

1 WORDS BUT I MEAN \* \* JURY INSTRUCTION \* \* THERE'S WORDS THAT  
2 THE JURY HAS ALREADY HEARD ABOUT, FEDERAL RECOGNITION AND  
3 WHAT THAT MEANS, BEING NONE FEDERALLY RECOGNIZED, I'M NOT  
4 SURE THAT THOSE ARE TECHNICAL.

5 THE COURT: I'M GOING TO RESERVE ON THAT TOO. THREE  
6 17 CONSTRUCTION OF CONTRACT AS A WHOLE, THAT'S PROBABLY ONE  
7 TO GIVE.

8 MS. IBARRA: THAT SEEMS FINE.

9 THE COURT: THREE 18, INTERPRETATION, CONSTRUCTION  
10 BY CONDUCT.

11 MR. STEIN: YEP.

12 THE COURT: WE'LL GIVE THAT ONE.

13 MS. IBARRA: YES.

14 THE COURT: THREE 19 INTERPRETATION OF REASONABLE  
15 TIME.

16 MR. STEIN: YES.

17 MS. IBARRA: YES.

18 THE COURT: WHEN THERE'S NO SPECIFIC TIME FOR  
19 PERFORMANCE.

20 MS. IBARRA: YEAH.

21 THE COURT: SO THREE 19 WE'LL GIVE. THREE 20,  
22 INTERPRETATION, CONSTRUCTION AGAINST DRAFTER.

23 MS. IBARRA: YES.

24 MR. STEIN: YOUR HONOR THAT WOULD BE.

25 THE COURT: WHO WAS DRAFTING MR. --.

26 MR. STEIN: RAE LAMOTHE WAS DRAFTING TOO.

27 MS. IBARRA: OH. MR. STEIN AND HIS COUNSEL  
28 DRAFTED THE ORIGINAL AGREEMENT.

1 MR. STEIN: WHICH WAS MODIFIED SIX TIMES.

2 THE COURT: SO WHO'S THE DRAFTER, I GUESS THAT'S THE  
3 QUESTION.

4 MR. STEIN: THAT'S EXACTLY WHY THE INSTRUCTION IS  
5 NOT A PARTICULARLY GOOD ONE.

6 MS. IBARRA: SO MY CLIENTS GOING TO ALLEGE THAT EVEN  
7 WHEN MS. LAMOTH WAS PARTICIPATING AS COUNSEL FOR THE TRIBE  
8 THAT SHE WAS DOING IT AT THE DIRECTION OF MR. STEIN AND NOT  
9 OF THE TRIBE AND ALL OF THE DIRECTION WAS GIVEN BY MR. STEIN  
10 TO MS. LAMOTH SO HE WAS STILL THE DRAFTER IS WHAT THEY WILL  
11 ALLEGE.

12 THE COURT: OKAY. WELL WHOEVER WAS DRAFTING THEN  
13 THEY'RE GOING TO GET THIS INSTRUCTION IF IT WAS MR. STEIN OR  
14 SOMEBODY ELSE THEN THEY'LL GO -- IT'S CONSTRUCTION AGAINST  
15 DRAFTER THREE 20.

16 MS. IBARRA: NONE OF THE TRIBAL COUNCIL PEOPLE WERE  
17 DRAFTING AGREEMENTS.

18 MR. STEIN: THEIR TRIBAL GENERAL COUNSEL WAS  
19 DRAFTING THE AGREEMENT.

20 THE COURT: SO THERE WAS A DISPUTE, SO WHOEVER WAS  
21 DRAFTING WAS -- THREE 20 WE'LL GIVE, 32 ONE EXISTENCE OF  
22 CONDITION PRESS TENT DISPUTED.

23 MR. STEIN: THAT'S NOT US, THERE'S NO CONDITION  
24 PRESENT INTO YEAH I DON'T HAVE THAT ONE.

25 THE COURT: 32 ONE NO, 32 TWO OCCURRENCE OF AGREED  
26 PRESIDENT WAIVER [AOE] TO I HAVE NO, THREE 24 ANTICIPATE LEE  
27 BREACH, THERE [TPH-Z] [TKHRAEUPL] [-FPL] ANTICIPATE TREE  
28 BREACH.



1 MS. IBARRA: SO WHEN MR. STEIN AND SMDC WERE  
2 ALLEGING THAT THEY HADN'T BEEN -- THAT THEY WEREN'T -- THAT  
3 THEY WERE FIRED AND NOT TERMINATED SO THAT WAS AN ALTERNATIVE  
4 PLEADING.

5 MR. STEIN: SO THERE WAS NO -- THERE WAS NO QUESTION  
6 \*\*. THERE WAS A TERMINATION ON OCTOBER 3 OF THE SMDC  
7 AGREEMENT, THERE IS A RESIGNATION ON SEPTEMBER 9 THAT  
8 MRS. STEIN AS AN OFFICER OF THE INSTRUMENT \*\* OF THE SEPARATE  
9 ORGANIZATION [TKPWA\*GT].

10 Q. SO MRS. CARMELO SAID TESTIFIED THAT FAR SHE ACCEPTED  
11 THE ORAL RESIGNATION WHEN IT WAS GIVEN ON SEPTEMBER 9TH AND  
12 THAT THEY ALSO REQUEST [THAD] IT BE DONE IN WRITING AS WELL.  
13 SO THERE WAS TWO CONTENTIONS THAT THERE WAS A RESIGNATION ON  
14 SEPTEMBER 9TH SO IF IT'S NOT ACCEPTED THAT THERE WAS A  
15 RESIGNATION ON SEPTEMBER 9TH EVER ALL DUTIES, THEN ANTICIPATE  
16 TREE BREACH IS AN ALTERNATE [A\*LGS] ALLEGATION THAT THE  
17 TERMINATION WAS DONE IN ANTICIPATION THAT HE WOULD STOP  
18 PERFORMING UNDER THE CONTRACT.

19 THE COURT: SO ARE YOU SAYING THAT HIS [TERPLGS] OF  
20 WHEN HE SAID I QUIT HE BREACHED THE CONTRACT IF HE WAS --.

21 MS. IBARRA: SO THE ALLEGATIONS AS I UNDERSTAND IT  
22 NOW IS THERE IS AN ADMISSION THAT MR. STEIN RE [STAOEUPD] AS  
23 THE [TKPW\*GT] GABRIELINO-TONGVA [TKAEUPLG] AUTHORITY BUT NOT  
24 A RECEIPTS NATION IN TOTAL WITH THE TRIBE. SO IF THAT'S THE  
25 CASE, THEN THE TERMINATION WAS AN ANTICIPATE TREE -- IT WAS  
26 ANTICIPATE TREE BREACH THAT HE WOULD STOP EN PERFORMING  
27 ENTIRELY.

28 MR. STEIN: THAT'S NOT WHAT ANTICIPATE TREE BREACH

1 IS ANTICIPATE TREE BREACH IS TOTE EIFFE SITE BREAK OR  
2 CONTRACT BEFORE PERFORMANCE IS REQUIRED \*\*. IN OTHER WORDS  
3 YOU'RE ABOUT TO SEND COAL TO DEPARTMENT OF WATER AND POWER,  
4 YOUR TRAIN HAS NOT LEFT AND YOU SAY OH MY GOD WE'RE GOING TO  
5 LOSE OUR SHIRT BY AGREEING TO SEND COAL THIS CHEAP, GOING TO  
6 GO [TPR\*PL] BREAK THE [K\*T] BEFORE WE SEND THIS FIRST THING  
7 OF COAL THAT'S WHAT ANTICIPATE TREE BREACH IS ABOUT, THAT  
8 AIN'T HERE BECAUSE WE'RE YEARS IN THE [PERT] [APBS] OF THE  
9 CONTRACT.

10 THE COURT: WELL ISN'T THIS THERE CLAIM THAT YOU  
11 QUIT AND SO THAT WAS A REPUDIATION OF ANY FURTHER PERFORMANCE  
12 OF SMDC OR ANYBODY ELSE UNDER THE CONTRACT.

13 MR. STEIN: SMDC CONTRACT PROVISION STATES THAT  
14 EITHER PARTY FOR ANY REASON CAN TERMINATE ON 30 DAYS NOTICE,  
15 THAT OCCURRED ON OCTOBER 3.

16 THE COURT: YOU MEAN WHEN YOU QUIT?

17 MR. STEIN: NO THE --

18 THE COURT: THAT WASN'T THE NOTICE.

19 MR. STEIN: NO THE QUESTION WAS LEAVING AS AN  
20 OFFICER. IS HE EDDIE [STPHRAOEUP] [ST-L] EYE [STPHREUPLT]  
21 OTHER STEEL THE MONEY I CAN'T BE AN OFFICER OF ANY  
22 ORGANIZATION [-RGS] ON OCTOBER 3, THEY SAID OKAY WELL THAT'S  
23 GOING TO TERMINATE THE [SA\*LG] TOO AND THAT WAS THE LETTER \*\*  
24 WHICH HAD TO BE IN WRITING UNDER SECTIONS FIVE AND 13 OF THE  
25 AGREEMENT. THERE WAS NO ANTICIPATE TREE BREACH, THERE WAS A  
26 VALID TERMINATION OF THE SMDC AGREEMENT.

27 MR. FORDYCE: WELL YOUR HONOR THE SOURCES OF  
28 AUTHORITY I THINK ARE QUITE CLEAR, REPUDIATION OF CONTRACT

1 ALSO [TPHOEPBL] A [TPRAOEP] [THAOE] A- OCCURS WHEN A PARTY  
2 ANNOUNCES AN NOT TENSION NOT TO PERFORM FRYER PRIOR TO THE  
3 TIME DUE FOR PERSON [ARPS] AND [STAOEFPBL] SON STEVEN 12,  
4 THAT'S ROMAN NUMERAL 12 LLC WHICH IS FIREMANS FUND.

5 MS. IBARRA: AND THE PERFORMANCE UNDER THE SMDC WE  
6 CONTEND IS TWOFOLD IS FEDERAL RECOGNITION OR YOU KNOW  
7 CASINO -- AND CASINO ACTUALLY, BOTH, THOSE TWO PROMISES SO  
8 THAT WAS BEFORE PERFORMANCE THAT OCCURRED THERE WAS A  
9 TERMINATION SO -- AND A DECLARATION OF AN INTENTION NOT TO  
10 PERFORM, SO.

11 THE COURT: AND MAYBE -- I THINK THEIR CLAIM IS --  
12 THE WAY RE [PAOUFT] [KWRAEUGS] WORKS IS THERE'S AN EXTENSION  
13 NOT TO PERFORM AND THEN THE OTHER SIDE SAYS WELL I'M NOT  
14 PERFORMING SO I THINK THEIR CLAIM WAS WHEN HE QUIT ESTOPPED  
15 PERFORMING SO THEY WEREN'T GOING TO PAY OR REIMBURSE OR  
16 WHATEVER BUTT IS THAT CORRECT.

17 MR. STEIN: NO.

18 MS. IBARRA: YES.

19 MR. STEIN: NO.

20 MS. IBARRA: I BELIEVE IT IS.

21 MR. FORDYCE: THE PROBLEM IS IT'S NOT ANTICIPATE  
22 TREE.

23 MR. STEIN: PAYMENT UNDER THE SMDC AGREEMENT PAYMENT  
24 WAS DUE UPON [TERPLGS] ALL SUMS WERE IMMEDIATELY [TKAO\*PB]  
25 TUO UPON [TKERPLGS].

26 THE COURT: OKAY.

27 MR. STEIN: SO THERE'S -- AGAIN THE ANTICIPATE TREE  
28 BREACH IS JUST WILDLY OUT OF --.

1 THE COURT: I'LL SAY GIVE WITHOUT PREJUDICE F IT  
2 ISN'T SUPPORTED BY EVIDENCE THEN I'M NOT GOING TO GET TO IT.  
3 LET'S JUST TRY TO GET THROUGH BREACH OF CONTRACT AND THEN  
4 WE'LL DO. OH I THINK WE ARE DONE THE NEXT IS BREACH OF THE  
5 IMPLIED COVENANT WHICH IS YOUR NEXT CAUSE OF ACTION.

6 MS. IBARRA: RIGHT.

7 THE COURT: SO LET'S LEAVE IT THERE SINCE WE  
8 FINISHED WITH BREACH OF CONTRACT. SO WE STILL HAVE EIGHT  
9 THROUGH 15 TO GO THROUGH.

10 MR. STEIN: YOUR HONOR WE HAVE THE 35 [ # \* ] 50  
11 THROUGH 375 AREA FOR DAMAGES UNDER CONTRACT.

12 THE COURT: 350 AM I MISSING SOMETHING E YES YOUR  
13 HONOR.

14 THE COURT: MORE INSTRUCTIONS.

15 MR. STEIN: YES YOUR HONOR.

16 THE COURT: TAKE ME THERE.

17 MR. STEIN: THERE'S ONLY FOUR OF THEM.

18 THE COURT: THAT'S ALL RIGHT 350 WHERE DOING.

19 MR. STEIN: 350 IS INTRODUCTIONS TO CONTRACT  
20 DAMAGES.

21 THE COURT: OH OKAY, THE DAMAGES, ALL RIGHT. 350,  
22 GIVE THAT ONE.

23 MR. STEIN: AND THEN WE GO TO 35.5, OBLIGATION TO  
24 PAY MONEY ONLY?

25 A. 350 FOR SPECIAL DAMAGES WERE THERE ANY SPECIAL  
26 DAMAGES.

27 MR. STEIN: NO WE'RE [-RPB] CLAIMING IT.

28 MS. IBARRA: NO WE'RE NOT CLAIMING SPECIAL DAMAGES.

1 SO FOR DAMAGES, I'M SORRY CAN I GET CAUGHT UP IT'S 3900.

2 MR. FORDYCE: NO 350.

3 MR. STEIN: 350 IS AN OKAY YOUR HONOR.

4 THE COURT: YEAH, GIVE.

5 MR. STEIN: AND THEN 35.5 OBLIGATION TO PAY MONEY  
6 ONLY \* \*?

7 A. WHAT ABOUT LOSS OF PROFITS.

8 MS. IBARRA: THERE WAS ARGUABLY NO -- BECAUSE IT  
9 REALLY WASN'T A FOR PROFIT ENDEAVOR.

10 MR. STEIN: WELL THE LOSS OF PROFIT WOULD BE THE  
11 CASINO PROFIT SO WE'D LIKE THAT, YEAH, WHAT NUMBER IS THAT  
12 YOUR HONOR.

13 THE COURT: I MEAN YOU'RE BOTH CLAIMING FROM LOST  
14 PROFITS FROM THE CASINO RIGHT, ALL RIGHT 352.

15 THE CLERK: 352.

16 THE COURT: UH-HUH. 35 THREE, ALSO OF PROFITS, SOME  
17 PROFITS EARNED, I DON'T THINK THERE WERE NO PROFITS EARNED,  
18 RIGHT.

19 MR. STEIN: YEAH.

20 THE COURT: 35 FOUR OWN OR LESS HE'S DAMAGES FOR  
21 REAL PROPERTY, NO. 35.5 OBLIGATION TO PAY MONEY ONLY.

22 MR. STEIN: WE'RE ASKING NEAR YES.

23 MS. IBARRA: YES.

24 THE COURT: YES, 35.5 THEN, GIVE **[-FPLGT]** 356 BUYERS  
25 DAMAGES FOR REACH OF SALE OF REAL PROPERTY. 35 FOUR

26 **[TPHROEL]** **[AOE]** **[PROER]** TORE PURCHASE OAT **[PRAEPL]** 358

27 MITIGATION \*\*.

28 MR. STEIN: YEAH 358 WE'VE ASKED FOR MITIGATION.

1 THE COURT: LET GIVE THAT ONE. 359 PRESENT CALF  
2 DAMAGES.

3 MR. STEIN: YEAH.

4 THE COURT: WE'LL GIVE THAT ONE. 360 NOMINAL  
5 DAMAGES.

6 MS. IBARRA: WE REQUESTED THAT.

7 MR. STEIN: THAT DOES NOT BELONG IN ANY OF THESE  
8 CONTRACTS, AND [WUBS] AGAIN WE'RE DEALING WITH REAL AMOUNTS  
9 DUE TO CRANE AND REAL AMOUNTS DUE TO SMDC AND THEY'RE  
10 CLAIMING REAL AMOUNTS --.

11 THE COURT: I'M NOT SURE NOMINAL DAMAGES IS  
12 APPROPRIATE HERE.

13 MR. STEIN: WHAT NUMBER IS THAT.

14 THE COURT: 360.

15 MS. IBARRA: 360.

16 THE COURT: I DON'T THINK THAT APPLIES, I'M NOT  
17 GOING TO GIVE 360. 36 ONE RELIANCE DAMAGES.

18 MR. STEIN: NO THAT WOULD BE -- NO THAT WOULDN'T BE  
19 RIGHT.

20 THE COURT: IF YOU HAVE DECIDE THE DEFENDANT BREACH  
21 AT CONTRACT THE DEFENDANT [TPHEUFT] EYE THAT HE SPENT IN  
22 PREPARE [TPOERG] CONTRACT PERFORMANCE \* \* JURY INSTRUCTION \*  
23 \*.

24 MR. STEIN: THAT'S IF YOU AGREE TO SELL ME  
25 [FLOWER|FLOUR], THEN I'M GOING TO BUY A TABLE AND MAKE SOME  
26 BREAD AND YOU SAY WELL THERE'S NOT ENOUGH [FLOWER|FLOUR] TO  
27 GO AROUND SO I SOLD IT TO THE HIGHEST BITTER THAN YOU, I  
28 WOULD HAVE NEVER BOUGHT A TABLE AND I WOULD HAVE NEVER HIRED

1 THESE GUYS TO MAKE BREAD.

2 MS. IBARRA: YEAH I'M NOT SURE WE'RE ALLEGING THAT.

3 THE COURT: IF YOU SPEND ANY MONEY ON RELIANCE ON.

4 MR. STEIN: NO.

5 THE COURT: THE CONTRACT, EITHER DEFENDANTS ON THEIR  
6 CONTRACT.

7 MR. STEIN: NO.

8 THE COURT: OR PLAINTIFFS.

9 MR. STEIN: NO BECAUSE ONCE AGAIN WE HAD  
10 REIMBURSABLE TERMS IN THE CONTRACT YEAH.

11 THE COURT: SO 36 ONE IS OUT, IT DOESN'T [SOUD] LIKE  
12 ANY OF YOU NEEDED.

13 MS. IBARRA: UNTIL THE LIBRA AGREEMENT CAME IN THERE  
14 WAS NO MONEY.

15 THE COURT: 37 ZERO WAS COMMON COUNT MONEY NOT  
16 RECEIVED BUT THAT WAS FOR THE COULD CROSS-COMPLAINT.

17 MR. STEIN: THE CROSS-COMPLAINT WOULD BE 37 ONE  
18 [TKPW-Z] AND SERVICES.

19 THE COURT: I THINK WE ALREADY TALKED ABOUT THAT,  
20 BUT I GUESS WE CAN TUCK ABOUT THAT 37 ONE WE'LL GIVE. COMMON  
21 COUNT OPEN BOOK DO YOU HAVE AN OPEN BOOK CAUSE OF ACTION.

22 MR. STEIN: NOVEMBER.

23 THE CLERK: WHAT NUMBER WAS THAT.

24 THE COURT: THE ONE THAT WE'RE GIVING OR NOT  
25 GIVING.

26 THE CLERK: NOT GIVING.

27 THE COURT: 37 ONE.

28 MR. FORDYCE: [KPHOPBT] ACCOUNT, ACCOUNT [-FPL]

1 STATED.

2 MR. STEIN: YES, WE HAVE THAT.

3 THE COURT: ALL RIGHT 37 THREE GIVE. 37 FOUR COMMON  
4 COUNT MISTAKEN RECEIPT.

5 MR. STEIN: NO.

6 MS. IBARRA: NO.

7 THE COURT: 38 ZERO AGREEMENT FORMAL ICED BY  
8 ELECTRONIC MEANS.

9 MR. STEIN: NO.

10 MS. IBARRA: NO.

11 THE COURT: OH NOW WORE IN THE VERDICT FORMS.

12 MR. STEIN: THEN HAD YOU SKIP FORWARD TO 3926.

13 THE COURT: ARE THOSE THE DAMAGES.

14 MR. STEIN: YES THIS IS THE DAMAGES SETTLEMENT  
15 DEDUCTION.

16 MS. IBARRA: SEW THOSE ARE DAMAGES FOR TORTS, RIGHT,  
17 SO DAMAGES.

18 THE COURT: LET'S TALK ABOUT THAT LATER, IT'S JUST  
19 TOO LATE, IT'S ALREADY -- WE'VE GOT TO CLEAN UP OUR DESK AND  
20 GO. SO HAVE A NICE DRIVE HOME, WORK ON YOUR OPENINGS WHICH  
21 ARE ONLY GOING TO BE HALF AN HOUR LONG SO MAKE SURE YOU HAVE  
22 PLAINTIFF YOU ARE -- DID WE GET YOUR LIST OF WITNESSES IN THE  
23 ORDER YOU'RE CALLING THEM.

24 MR. STEIN: YEAH WHO DO I PREPARE FOR.

25 MS. IBARRA: THEY'RE ACTUALLY, THEY'RE GETTING THEM  
26 RIGHT NOW IS MAKING SURE THAT THEY SHOW UP BUT WHAT WE TALKED  
27 ABOUT WAS PATRICIA NEMINSKI, SIGN [SEUPL], VICTIM VELASQUES  
28 AND ALSO I DIDN'T MENTION THIS EARLIER BUT THEIR OTHER BY THE



1 WAS EDGAR PEREZ AND ADAM LOYA.

2 THE COURT: ARE THESE ALL NOR TOMORROW.

3 MS. IBARRA: THE FIRST THREE ARE SHORT BECAUSE THEIR  
4 ONLY TESTIMONY IS AS TO THE DATE OF THE SIGNATURE OF THE SMDC  
5 AGREEMENT.

6 THE COURT: I UNDERSTAND I JUST WANT TO MAKE SURE  
7 THAT MR. STEIN [TPHO\*EGZ] KNOWS ALL OF THE WITNESSES.

8 MR. STEIN: YEAH SO YOU'RE SAYING YOU'RE GOING TO  
9 HAVE EDGAR PEREZ AND ADAM LOYA TOMORROW.

10 MS. IBARRA: YES.

11 MR. STEIN: YOUR HONOR THEY WERE NOT HAD LISTED IN  
12 THE WITNESSES.

13 MS. IBARRA: THEY ARE LISTED IN THE WITNESSES.

14 MR. STEIN: THEY ARE NOT.

15 THE COURT: ARE THEY HAD NOT ON YOUR WITNESS LIST.

16 MS. IBARRA: YES, THEY ARE.

17 MR. STEIN: BUT WE WENT THROUGH THE WITNESSES THEY  
18 ARE GOING TO [KAUFL] AND [HOPBG] DETAIL BUT EDGAR PEREZ IS  
19 NOT ON HERE [SKPAD] [HROEU] ARE IS NOT ON HER.

20 THE COURT: THAT'S NOT HERE.

21 MS. IBARRA: THEY ARE ALL ON THE WITNESS LIST.

22 THE COURT: WHEN I HAVE SAY NOT ON THE WITNESS LIST  
23 I HAVE MEAN NOT ON THE [W\*EUL].

24 MR. STEIN: I'M NOT SURE, EDGAR PEREZ AND ADAM LOYA.

25 MS. IBARRA: YES.

26 MR. STEIN: I KNOW THERE'S A VERY LONG LIST. I WILL  
27 GET THERE ANY SECOND YOUR HONOR.

28 THE COURT: OKAY I'M JUST CLEANING UP MY DESK.

1                   MR. STEIN: THANK YOU YOUR HONOR. MY STAFF HAS GOT  
2                   [H-R] SWEATERS [ORPB] THEY'RE READY TO GO, THAT'S HOW I KNOW  
3                   I NEED TO GO IS THEY START GATHERING THEIR THINGS AND PUT  
4                   [-GS] ON THEIR SWEATERS AND LOOKING AT ME ARE THEY FINISHED  
5                   YET.

6                   THE COURT: WE'RE OFF. 04:25 PM.

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