

1 CAUTIONS IN USING A REALTIME PARTIALLY EDITED TRANSCRIPT

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3 IN A REALTIME PARTIALLY EDITED TRANSCRIPT, YOU MAY
4 SEE THE REPORTER'S RAW SHORTHAND NOTES. CONSEQUENTLY, YOU
5 MAY SEE ERRORS IN CAPITALIZATION AND PUNCTUATION,
6 MISSPELLINGS, SMALL WORDS MISSING (SUCH AS "THE," "IT,"
7 "A"), TRANSPOSED WORDS, DOUBLE WORDS, CONTEXTUAL HEARING
8 MISTAKES, HEARING MISTAKES OF SOUND-ALIKE WORDS, POSSIBLE
9 INCORRECT SPEAKER IDENTIFICATION, AND AT TIMES STENO
10 OUTLINES THAT HAVE NOT BEEN TRANSLATED.

11 BE ASSURED THAT IN THE FINAL EDITED VERSION OF THE
12 TRANSCRIPT, ALL ERRORS ARE CORRECTED. AN UNEDITED OR
13 PARTIALLY EDITED TRANSCRIPT REPRESENTS A FIRST DRAFT AND
14 SHOULD BE USED ACCORDINGLY.

15 THEREFORE, IT IS NOT RECOMMENDED YOU RELY ON THE
16 UNEDITED VERSION AS YOU WOULD A FINAL EVIDENTIARY CERTIFIED
17 TRANSCRIPT. ALTHOUGH AN UNEDITED OR PARTIALLY EDITED
18 TRANSCRIPT WILL BE VERY READABLE AND MOSTLY ACCURATE, IT
19 SHOULD BE USED WITH GREAT CARE.

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GABRIELINO-TONGVA TRIBE VS. STEIN

TRIAL TESTIMONY OF A. MARGOLIS

10:16 AM.

THE COURT: Gabrielino versus Stein, BC361307.
Good morning counsel please make your appearances.

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

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

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

THE COURT: Thank you.

MR. STEIN: And Your Honor we have a few responses
to the court's request for documents that I'd like to put
on the record and go over with the court before we start.

THE COURT: Well we're starting at 10 15 right
now. Is this something we can take up later.

MR. STEIN: Whatever the Court's --.

THE COURT: Yeah let's do it later, I don't think
there's any reason to do it now, the documents that I was
requesting be produced don't have to be produced until your
testimony so I think we can just delay that a little bit.

MS. IBARRA: Because there are issues with the
documents.

THE COURT: Okay.

MS. IBARRA: So we'll bring in Mr. Margolis.

THE COURT: Yes thank you.

1 MR. STEIN: And Your Honor.

2 THE COURT: Good morning Your Honor good morning.

3 MR. STEIN: I'd like to put on the record an
4 objection to Mr. Margolis' testimony to date and ask that
5 the entirety or substantial parts of it be stricken under
6 people V Sanchez that experts can't -- it's California
7 Supreme Court has held that the experts cannot rely on case
8 specific hearsay and Mr. Margolis in his detailed answering
9 to repeated questioning on what he relied on seems like the
10 majority of with a he's relied on was in fact case specific
11 hearsay and under people V Sanchez a recent California
12 Supreme Court case he can't give an opinion under evidence
13 code 801 or 802 relying on that.

14 THE COURT: Well he can't give evidence that's not
15 otherwise in the record is the issue. In other words he
16 can't rely on facts for the truth of the matter that is not
17 in the record already, that's the issue on people V
18 Sanchez, yeah.

19 MR. STEIN: I think the court knows the issue.

20 THE COURT: I have know people V Sanchez.

21 MR. STEIN: I believe the entire of his testimony
22 up until now has to be stricken or substantial portions of
23 it and I wanted to put on the record the objection.

24 THE COURT: Right. Motion is denied, objection
25 overruled.

26 MR. STEIN: Thank you Your Honor.

27 THE COURT: You may continue.

28 MS. IBARRA: Thank you.

1 Q. BY MS. IBARRA: Mr. Margolis are you here today to
2 give your opinions and conclusions regarding Mr. Mills'
3 opinions?

4 A. Yes.

5 THE COURT: Mr. --.

6 MS. IBARRA: Mr. William Mills opinions.

7 THE COURT: Yes.

8 MS. IBARRA: And he is Defendant SMDC's expert.

9 A. Yes.

10 Q. Have you read his written expert opinion?

11 A. I've read both of them, I've read the early one
12 and the one recent one.

13 Q. What do you mean by the early one?

14 A. He provided one I believe it was in relation to
15 the motion for summary adjudication or summary judgment, I
16 had that and I read that.

17 Q. Is that a declaration, in a declaration form?

18 A. I don't recall.

19 Q. Okay. And then so that one and then the one that
20 he provided in trial?

21 A. Yes.

22 Q. Okay. So why don't we just go through each of
23 his -- we don't need to go through his opinions but why
24 don't we just go through your conclusions regarding each of
25 his opinions?

26 A. Okay for -- and --?

27 A. I'm sorry.

28 Q. Just one more thing, did you review anything else

1 with regards to Mr. Mills like his testimony?

2 A. I read rough transcripts of his -- of part of his
3 testimony that was given her over the last week or so.

4 Q. Okay. .

5 THE COURT: Did you have an opportunity to read
6 this written opinion that was in this binder.

7 A. Yes.

8 THE COURT: Okay?

9 A. That's what I'm respond to go.

10 THE COURT: Okay.

11 MR. STEIN: Your Honor it's not clear, there are
12 three different documents, it's not clear which one he's
13 referring to, he said in his testimony only the first one
14 not the second or the third?

15 A. No I said that -- I'm sorry I'm talking.

16 THE COURT: Okay.

17 MS. IBARRA: Well he was -- are you arguing, he
18 was given everything in the binder.

19 THE COURT: Okay. Were you given everything in
20 the binder?

21 A. Oh I don't -- I don't have --.

22 MS. IBARRA: He wasn't given a binder?

23 A. Physically I don't have a binder I can tell you I
24 have something called expert opinion and it's under his
25 letterhead, just a minute.

26 Q. BY MS. IBARRA: And what's the table of contents
27 because that shows -- that gives you everything in --?

28 A. I don't have the table of contents with me but

1 it's expert opinion and then it's got basis for expert
2 opinion.

3 THE COURT: That would be tab two in the binder.

4 Q. BY MS. IBARRA: And then tab three is what, is it
5 the William K Mills vitae?

6 A. What did you say.

7 Q. The William Mills Curriculum Vitae?

8 A. Yes.

9 Q. Which is a buy oh?

10 A. Yes.

11 THE COURT: So he got everything in the bio.

12 MR. STEIN: Thanks for clarification.

13 MS. IBARRA: Okay.

14 Q. BY MS. IBARRA: So as to his first opinion, Mr.
15 Margolis what is your opinions and conclusions regarding
16 Mr. Mills' opinion?

17 A. Well --.

18 THE COURT: Can we just be clear, when you have
19 say the first opinion.

20 MS. IBARRA: Oh should I read it, I'll just read
21 the heading.

22 THE COURT: Yeah let's do that so we're clear
23 about what opinion he's addressing.

24 MS. IBARRA: Okay sure.

25 Q. BY MS. IBARRA: Mr. Mills' first opinion is one
26 first opinion, Mr. Stein was not GT Tribe's attorney in
27 connection with transactions, litigations or other legal
28 work at any time from January 2000 to December 2006. As a

1 result he had no duties to GT Tribe that a lawyer would owe
2 to a client, that's Mr. Mills' first opinion. Now Mr.
3 Margolis what is your opinion and your conclusions
4 regarding that opinion?

5 A. Right. First of all, as to whether there's an
6 attorney-client relationship goes -- in part anyway as to
7 whether -- whether the rules of professional conduct and
8 other matters applied to Mr. Stein in his relationship with
9 the tribe but also, even if there wasn't an attorney-client
10 relationship, he had a --.

11 MR. STEIN: Your Honor.

12 THE COURT: I don't think he's finished his --.

13 MR. STEIN: He seems to be reading from a document
14 that we haven't seen before and we've run into the same
15 situation with his first testimony where he had fully
16 prepared notes that he read from as he is now and they had
17 not been put into the record and they have not been given
18 to opposing counsel.

19 THE COURT: All right overruled. He's looking at
20 his notes?

21 A. I'm looking at any notes.

22 THE COURT: Overruled.

23 MR. STEIN: Again Your Honor the exact same ruling
24 the court granted that on the exact same issue when he
25 first came here.

26 THE COURT: And this is rebuttal, right? So they
27 didn't know what your expert was going to say so.

28 MR. STEIN: If he's reading from notes we have the

1 right to receive the notes that he's reading from otherwise
2 they should be taken from him.

3 THE COURT: Read them to me, give me the citation
4 on rebuttal and if you're right I will ask him to give them
5 to you. You may continue.

6 A. So that even if there wasn't an attorney-client
7 relationship, the rules of professional conduct and other
8 matters governing the conduct of attorneys applied because
9 he had a fiduciary relationship with the tribe and that
10 would invoke the rules, that would trigger the application
11 of the rules but as to whether there's an attorney-client
12 relationship, Mr. Mills is pressing that there needs to be
13 formalities and if those formalities don't exist then
14 there's no attorney-client relationship. And as I've said
15 before, the case law is that if an attorney provides legal
16 services and the person symptoms them that is an
17 attorney-client relationship. And also, if you give legal
18 advice and counsel, constitutes the practice of law and
19 issues involving interpretation of law and uncertainties as
20 to the application of the law to a particular transaction
21 that is legal advice and that would be Agran versus
22 Shapiro, 127 Cal.App.2d 807 at 809. The preparation of
23 legal instruments and contracts by which legal rights may
24 be secured, whether or not the case is pending in court,
25 that is the practice of law, and that would be Merchants
26 Protection -- People versus Merchants Protecive
27 corporation, it's a 1922 case which is still valid and
28 still a regularly cited to us, it's at 189 Cal 531, 535.

1 So those kinds of -- Mr. Mills attempts to give the
2 impression that you need all these formalities and you
3 really don't. He quotes on Page 2 of the basis for his
4 opinion he says like any contract there must be a mutual
5 agreement on fundamental terms and conditions and then he
6 quotes -- he cites to mal an on malpractice and then the
7 quote from Mallen does not support that, the quote is the
8 duty arises from a present contract which is a retainer or
9 a clear understanding between the parties or a
10 relationship --.

11 MR. STEIN: Excuse me.

12 MR. FORDYCE: Where is he have reading from.

13 MR. STEIN: Where is he read-g from?

14 A. I'm reading from Mr. Mills' Page 2 of the basis
15 for his opinion.

16 MR. STEIN: Forgive us. That's not on Page 2 of
17 the opinion.

18 THE COURT: It's on Page 2 of the basis. All
19 right.

20 A. Of the basis. I'm now going to start over again
21 now.

22 MR. STEIN: Thank you?

23 A. It says like any contract there must be a mutual
24 agreement on fundamental terms and conditions. Sounds
25 pretty formal and then he quotes from Mallen which is which
26 does not support that, it says the duty arises from a
27 present contract which is a retainer or a clear
28 understanding between the parties or a relationship created

1 by conduct by the torn shows the intent to act as the
2 Plaintiffs attorney. What Mr. Mills fails to do is to
3 quote from the sentence came just before that in Mallen and
4 that is the existence of the relationship cannot be defined
5 by precise rules but depends on the circumstances creating
6 the relationship. He doesn't quote that, he deliberately
7 deleted that and went directly into the quote that he had.

8 MR. STEIN: Objection speculation.

9 MR. FORDYCE: Join.

10 THE COURT: Regarding whether he deliberately did
11 that, that part is sustained but.

12 MR. STEIN: And Your Honor can I have guide an how
13 to object, he's giving a narrative which if the court find
14 a narrative is okay in the current situations we don't want
15 to object to that but that means as he goes from one topic
16 to the next to the next he's covered five topics already
17 without a question.

18 MS. IBARRA: No he's --.

19 THE COURT: I don't know if that's happened he
20 hasn't even moved from the first opinion so I'm going to
21 overrule the objection. You're still addressing the first
22 opinion right?

23 A. Yes.

24 MS. IBARRA: So the question is what is his
25 conclusions and opinions as to Mr. Mills' first opinion?

26 A. In his first opinion he also states that in order
27 for there to be a valid contract, there has to be a
28 statement, understanding as to the scope of the work, the

1 compensation and the respective responsibilities of the
2 clients and the attorneys. What's the basis for that? He
3 cites to business and professions code 6148. 6148 does
4 have those as elements, it has elements as to what should
5 be in an attorney-client written agreement, if you have
6 don't have that then you're down to quantum meruit. It is
7 not -- these are not standards for creating an
8 attorney-client relationship. So to point to that and say
9 that unless you meet the standards of 6148 you have don't
10 have an attorney-client relationship makes no sense and
11 it's simply had not the law. Mr. Mills -- I'm still on
12 opinion one, points to the SMDC agreement which as I
13 mentioned last time is irrelevant but let's take a look at
14 it. Even in the SMDC agreement it refers to it applying to
15 Jonathan Stein as manager of SMDC, it's not referring to
16 him in some other capacity outside of that. And it also
17 says --.

18 MR. STEIN: Objection misstates the evidence.

19 THE COURT: Overruled?

20 A. It also says this agreement shall not form such an
21 attorney-client agreement, that is this agreement shall
22 not, it's doesn't mean that some other agreement may not
23 but even in that agreement he says but Mr. Stein, it
24 provides according to Mr. Stein and to Mr. Mills that Mr.
25 Stein would give legal advice -- would give advice of a
26 legal nature for SMDC's own purposes. So even in that
27 agreement, even though they don't want to call it
28 attorney-client or that he's an attorney, he's going to be

1 giving legal advice and he is an attorney and so what
2 they're saying is because we call it something else it's
3 going to be that. And also they say for SMD's purposes, in
4 fact there's nothing in the agreement that talks about own
5 purposes it's an empty conclusion. But even so --.

6 MR. STEIN: Objection vague, own purposes.

7 THE COURT: Sustained I'm a little confused.

8 Q. BY MS. IBARRA: Mr. Margolis what do you mean by
9 for SMDC's own purposes?

10 A. Oh I'm quoting from them.

11 THE COURT: When you say them are you referring to
12 the SMDC agreement?

13 A. No.

14 MS. IBARRA: Are you referring to Mr. Mills?

15 A. I'm referring to Mr. Mills.

16 MR. STEIN: Quoting where?

17 A. In his -- in his-- in the basis for his decision.

18 MR. STEIN: Where would that be?

19 A. I'll go through it.

20 THE COURT: Well Mr. Stein when you have your
21 chance to cross-examine you can cross-examine we're doing
22 direct now so --.

23 Q. BY MS. IBARRA: Mr. Margolis, is that your
24 understanding of Mr. Mills' testimony?

25 A. Yes.

26 MR. STEIN: Objection vague and ambiguous as
27 to --.

28 THE COURT: Overruled.

1 A. Yes. He said that -- that they would give advice
2 of legal nature for SMD's purposes and it is legal advice.
3 As for whether it is for SMD's own purposes I didn't see
4 anything in any agreement saying SMDC's own purposes, but
5 even if it did it was still legal advice to the tribe,
6 whatever was the purpose, was it was still legal advice
7 given to the tribe, also. So what does the SMDC -- I'm
8 still on opinion one.

9 Q. Okay. ?

10 A. So what does the SMDC agreement provide? One,
11 that no attorney-client relationship existed up to the time
12 of entering into the agreement and that the agreement
13 itself would not create an attorney-client relationship.
14 Then there are these resolutions confirming and renewing
15 the SMDC provisions and then Mr. Mills and Jonathan Stein
16 give -- convey the impression that each resolution
17 acknowledges that no attorney-client relationship existed
18 up to the time of the resolutions, not just as of the times
19 of the contract -- of the original contract but if you read
20 the SMDC agreement that's not the case. The resolutions
21 simply affirm that no attorney-client relationship existed
22 up to the time of entering the contract and the agreement
23 and that the contract does not create -- and the
24 agreement -- and they agreed that the contract does not
25 create an attorney-client relationship. It does not say
26 that these new representations in the resolutions were true
27 as if made as of the date of the resolutions because if it
28 had been that, then it would have said it.

1 MR. STEIN: Objection misstates what the
2 agreements say, they say exactly that.

3 THE COURT: Well okay?

4 A. Well let me --.

5 MS. IBARRA: Yes can you explain what you mean by
6 that they don't relate back to the original agreement?

7 A. It says that we're confirming the validity of the
8 prior -- of the original agreement. The original agreement
9 was that there was no attorney-client relationship or
10 fiduciary relationship up to the time of the entering into
11 that original agreement in 2001 and that this particular
12 agreement are not create any new ones.

13 MR. STEIN: Objection it misstates the agreement,
14 they say exactly what it says it doesn't say?

15 A. Let me finish.

16 THE COURT: Well all right overruled?

17 A. Except for one place. In the amendment and
18 modification agreement of January 27th, 2002 on Page 3,
19 Section 6, it says all representations and warranties
20 contained in Section 6 of the agreement are repeated hereby
21 as of January 27, 2002 as if first made on this date and
22 applied to the agreement and these modifications, that's
23 the place where that exists. So they knew what kind of
24 language to use, they used it there but it only referred to
25 Section 6 and Section 6 has nothing to do with the creates
26 of a attorney-client relationship or a fiduciary rip.

27 Q. And what does Section 6 have to do with?

28 A. It has to do with other matters, for instance,

1 assurances that the tribe has authority to do this and that
2 kind of thing, but it has nothing to do with the creation
3 of an attorney-client relationship or fiduciary
4 relationship.

5 Q. So you're saying those assurances are restated?

6 A. Yes.

7 Q. Every single time?

8 A. As if made on the date of the amendment and
9 modification agreement of January 27th, 2002 but the other
10 elements of the first agreement are not considered having
11 been made as of the date of that --.

12 Q. So you're saying --.

13 MR. STEIN: Objection misstates what the document
14 says.

15 THE COURT: All right. Overruled you may cross on
16 that.

17 Q. BY MS. IBARRA: So you're saying the fact that
18 that would -- that specific language is used in the
19 agreement means that the drafters knew to use that language
20 when they intended, is that what you meant.

21 MR. STEIN: Objection leading.

22 THE COURT: Sustained.

23 Q. BY MS. IBARRA: What do you mean by --?

24 A. Actually I said that, it was that they knew the
25 language was --.

26 MR. STEIN: Objection no question is pending?

27 A. She just --.

28 THE COURT: Overruled.

1 Q. BY MS. IBARRA: What is the significance of --?

2 A. They knew what when they wanted that to be what
3 they wanted that to convey they put it in the resolution.

4 Q. And who is they?

5 MR. STEIN: Objection?

6 A. They would be Mr. Stein.

7 MR. STEIN: Lack of foundation.

8 THE COURT: Overruled.

9 MS. IBARRA: Or the drafters?

10 THE COURT: They is who?

11 A. The drafters.

12 THE COURT: The drafters?

13 A. The drafters, the drafters let's say. And then in
14 his basis, Mr. Mills on Page 7 and eight says there are
15 additional covenants that they will not act outside of the
16 agreements. I didn't see that. He -- he doesn't explain
17 it but even if there are such covenants, if they acted
18 outside of the agreement they acted outside of the
19 agreement. If an attorney-client relationship and
20 fiduciary relationship were created outside of the
21 agreement, they were. And then on Page 10 of the basis he
22 says that there's -- that nothing -- he --.

23 MR. STEIN: Objection vague as to location?

24 A. Page 10 of the basis, that's what I said.

25 MR. STEIN: And where are you referring to Page
26 10.

27 THE COURT: Page 10, overruled. Keep going?

28 A. He says that there's nothing further relating to

1 the -- he says there would be nothing further related to
2 the subject matter of the agreement that if there was
3 something more it would be in writing. So as to one, the
4 subject matter of the agreement, the subject matter of the
5 agreement is the relationship between the tribe and SMDC
6 and Jonathan Stein as manager of SMDC and so what they're
7 saying is that anything having further to do with that
8 would be in writing, it doesn't talk about anything outside
9 of that. But even if it meant more than that, so what? If
10 in actuality they entered into an attorney-client
11 relationship or had a fiduciary -- or had a fiduciary
12 relationship so they breached the agreement. That wouldn't
13 change the reality of what happened here. By the way Mr.
14 Mills, one of the basis for his opinion that there was no
15 attorney-client relationship is that that if there was an
16 attorney-client relationship there would have been a
17 conflict so therefore, there was no attorney-client
18 relationship. He made -- there was an attorney-client
19 relationship.

20 MR. STEIN: Objection vague?

21 A. A --.

22 THE COURT: Overruled?

23 A. There was an attorney --.

24 MS. IBARRA: Go ahead Mr. --?

25 A. What? What do I do.

26 MS. IBARRA: Go ahead.

27 THE COURT: Yeah we need to stop with objection
28 that's are meant to disrupt the witness' testimony.

1 MR. STEIN: They are not meant to be disruptive.

2 THE COURT: Well then wait until he's done
3 speaking and you can make an objection but don't object in
4 the middle of a sentence.

5 MR. STEIN: He just --.

6 THE COURT: Going forward, wait until he's
7 finished with his sentence and then you can object.

8 MR. STEIN: We're here to cooperate. Thank you,
9 Your Honor.

10 THE COURT: Reread the testimony please.

11 (Record read.)?

12 A. That was when I was interrupted.

13 THE REPORTER: Yes?

14 A. I'm just simply going to say that obviously there
15 would never be a conflict -- there wouldn't ever be a
16 conflict then because if the presence of a conflict meant
17 there was no attorney-client relationship then there
18 wouldn't be any issue. The reason there are conflicts
19 rules is because people have attorney-client relationship.

20 THE COURT: So basically -- are you saying the
21 argument is a little bit circular?

22 A. It's circular and silly I find. Okay.

23 MR. STEIN: Objection that was not his argument
24 and that's why I said objection vague, misstates the
25 evidence.

26 THE COURT: Overruled.

27 Q. BY MS. IBARRA: Do you have anything further on
28 opinion one?

1 A. Yes he says that -- that there was no
2 attorney-client relationship because there was other
3 counsel. By the way this whole thing of other counsel, I
4 dealt with the last time and I dealt with it piecemeal and
5 so I'm going to try put it all together today instead of
6 dealing with discreet issues about that. And that will
7 particularly come up as to 3-300. The fact that there was
8 other counsel does not mean that Mr. Stein was not also the
9 council and you know as to independent counsel that's for
10 the other issue that I will get to. So the SMDC agreement
11 is not relevant but Mr. Mills depends on it to a great
12 extent. If there was attorney-client relationship it
13 doesn't matter that SMDC or Jonathan Stein deny it.

14 Q. BY MS. IBARRA: Do you have anything further?

15 A. No I'm trying to -- yes, I do have more. So as to
16 whether had he calls it legal advice, he gave advice and
17 prepared documents and performed other legal services for
18 the tribe and in the Benninghof case, I don't know if you
19 have the citations for that yet, it's Benninghof versus
20 superior court it's 2006 136 Cal.App.4th '61. And in that
21 case, the court refers to other language is a proving Lee
22 and it adopts it and some of the language is written
23 disclaimer -- a written disclaimer does not by itself
24 prevent the existence of an attorney-client relationship.
25 A retention agreement is like any other contract creating a
26 legal relationship. The nature of the instrument is not to
27 be determined by what the parties called it, its nature is
28 to be determined by the legal effect. The label placed by

1 the parties on the relationship is not dispositive and
2 subterfuges are not countenanced, the law respects form --
3 respects form less than substance.

4 MR. STEIN: Your Honor now that he's finished
5 speaking I have an objection, again he's reading directly
6 from notes that we have not been provided and he's noting
7 that.

8 THE COURT: I know I'm noting that, that's true he
9 was reading that but this is rebuttal so these were not
10 notes that were created prior to, he had to listen to your
11 expert, this is rebuttal testimony so these notes were not
12 created at the original time had you asked for notes or any
13 writings he had so that --

14 MR. STEIN: Your Honor any witness referring to
15 anything on the stand reading from notes that the witness
16 has created whether an expert or otherwise h counsel is
17 allowed to see those notes because he's reading from them.

18 MS. IBARRA: He's actually reading from a case,
19 the Benninghof case.

20 MR. STEIN: No he's not.

21 MS. IBARRA: It was a direct quotation for the
22 Benninghof case.

23 THE COURT: All right we'll talk about it
24 afterwards.

25 MS. IBARRA: It's what he indicated.

26 THE COURT: Give me a citation and we'll talk
27 about it not your citation Mr. Margolis I got your
28 citation?

1 A. Okay.

2 Q. BY MS. IBARRA: Mr. Margolis so you were just
3 finished citing the Benninghof case?

4 A. Yeah.

5 Q. Is there anything else on there?

6 A. And it appears to have a six 106 violation it's
7 moral turpitude because the SMDC agreement was an
8 instrument of Jonathan Stein's plan or scheme to Immunize
9 himself from the legal and ethical responsibilities and
10 consequences of him having an attorney-client and fiduciary
11 relationship with the tribe, the agreement was the way of
12 misleading the tribe and others as to the true nature of
13 their relationship.

14 MR. STEIN: Your Honor objection this is a brand
15 new opinion this is not a rebuttal to anything Mr. Mills
16 cited, Mr. Mills did not cite six 106 this is simply a
17 brand new opinion being offered in rebuttal testimony and
18 re object to that.

19 MR. FORDYCE: Join.

20 MS. IBARRA: This is his opinion that he has
21 formed after reviewing the opinion of your experts
22 witnesses -- of your expert witness and all the other
23 evidence that has come in during the trial.

24 THE COURT: Overruled.

25 MR. STEIN: Again we're running right into the
26 [SHAOU LZ] of a mistrial here because of the desire to
27 constantly expand the case, add new legs, add new opinions,
28 add new witnesses, bring back people, have new direct in

1 the phase of rebuttal and we are running straight into a
2 mistrial.

3 THE COURT: Overruled?

4 A. Yeah and the --.

5 Q. BY MS. IBARRA: Mr. Margolis can you go ahead with
6 your opinion?

7 A. I'm sorry, I'm sorry.

8 Q. Go ahead.

9 A. And the importance of what I just said is
10 highlighted by the emphasis, the strong emphasis that Mr.
11 Mills placed upon the SMDC agreement as being the end
12 all -- almost the end all and be all of what we should be
13 looking at. He also aside from the SMDC agreement says
14 that -- aside from the SMDC agreement whatever work was
15 done -- whatever work was done was not legal and one of
16 the -- was not legal work. He refers to Lockyer memo and
17 he says, what Mr. Mills says it was signed by SMDC and
18 Stein as its president not as Mr. Stein as lawyer which is
19 not true. It's stated in that document on behalf of the
20 Gabrielino-Tongva tribal council by Jonathan Stein Esquire,
21 president Saint Monica development company LLC. Mills also
22 says this was lobbying, yeah it was lobbying but as I said
23 last time it could be lobbying but if an attorney does it
24 it is also providing of legal services by representing a
25 party and by making legal arguments, it can be done by a
26 non lawyer. There are things that can be done by non
27 lawyers that are on the edge of legal work. There's taxes,
28 there's work in insurance, there's collections, there's

1 real estate, there's loan modification, there's accounting
2 and the state bar and these various professions have had to
3 work out various treaties and so on. But the fact that a
4 non attorney can do certain things does not mean that an
5 attorney when he does it is acting as a non attorney and
6 not an attorney. The fact is if work can be done by a non
7 attorney who is performed by an attorney who makes himself
8 known as a attorney, that would be considered legal work
9 and the case on that is -- one case, I mean it's a well
10 established principle. In the matter of hang hwa a n g,
11 it's review department 2014, Five California state bar
12 court reporter 29 six. There's also Crawford versus state
13 bar, it's a 1960 case 54 Cal second, six 59 at six '67 to
14 six '68. And this whole thing about the example of -- but
15 if I say --.

16 MR. STEIN: Before you have get there, objection
17 he is directly contradicting his earlier opinion that
18 lobbying is not legal work so if he's changing his opinion.

19 THE COURT: I don't know about that objection
20 misstating prior testimony?

21 A. I didn't see that.

22 THE COURT: Well if he is, Mr. Stein, you can
23 point that out to me on cross and also closing if he's
24 contradicting himself so?

25 A. Lobbying can be non attorney work but it could be
26 work done by a lay person, but when it's done by an
27 attorney it's legal work and that's what I said last time.
28 Now as to the examples where Mr. Stein says suppose --

1 somebody says -- I say to someone I'm not your attorney
2 when that person has asked.

3 MR. STEIN: Objection narrative.

4 THE COURT: Mr. Stein didn't I say to wait until
5 he's finished and you know some of these answers or
6 narratives, he's giving a rebuttal to your experts first
7 opinion which covers quite a bit of pages in this, so he's
8 covering those grounds.

9 MR. STEIN: I'm trying to follow the court when
10 he's jumping from one topic to another, it's perhaps that
11 I'm picking up the enough topic faster than other people I
12 thought that's when I'm supposed to get an objection in but
13 I'll seek to follow the Court's advise.

14 THE COURT: So let's read back the witnesses last
15 answer.

16 (Record read.)?

17 A. When that person has asked for legal advice and
18 Mr. Stein's position and has opinion therefore, there's no
19 attorney-client relationship, the fact is --.

20 Q. BY MS. IBARRA: Can you clarify that, what do you
21 mean whether somebody asks for legal advice and?

22 A. That somebody asks for legal advice and Mr. Stein
23 says I'm not your lawyer but he gives legal advice and so
24 the -- the contention is therefore, it's not legal advice.
25 It is true for the purpose of Evidence Code '95 one and '95
26 two in terms of what matters could be compelled as to
27 evidence that once an individual says I'm not your
28 attorney, there's no expectation of privacy so it can be

1 compelled but that's separate from the issue of when an
2 attorney-client relationship has been formed, if the
3 relationship has been formed it has been formed, he gives
4 legal advice, he's formed an attorney-client relationship.
5 But the -- oh thank you -- how did she know.

6 MS. IBARRA: That's just water given to Mr.
7 Margolis?

8 A. Wow. Let me just --

9 Q. Yeah just take a minute?

10 A. See what I've you've done to me.

11 MR. STEIN: Your Honor you know.

12 MS. IBARRA: It was in jest, it's in jest.

13 MR. STEIN: I've been sitting here taking
14 accusations for 14 weeks and now he's telling me that I've
15 made him ill by stating these simple objections that any
16 opposing counsel would state to this ridiculous testimony
17 that he's given.

18 A. I was joking.

19 MR. STEIN: I take offense at that. I'd like the
20 court to instruct the witness not to get personal with me.
21 I've stood here and listened to people lie day in and day
22 out about what I've done, about what I said and what a
23 terrible human being I am. I've had it with that and I'd
24 like this expert to either sit back and apologize or be
25 directed by the Court.

26 MS. IBARRA: It was clearly in jest.

27 THE COURT: Mr. Stein -- Mr. Stein, you're angry,
28 you're raising your voice, you're making accusations,

1 you're mad doging, as we say, which means making faces at
2 the witness. I understand the testimony is difficult to
3 listen to, I understand that. I've known that throughout
4 the trial but you know outburst is not going to help, it's
5 going to move the testimony along, it doesn't help you
6 personally.

7 MR. STEIN: Sure.

8 THE COURT: So please try to control yourself. I
9 understand you think the witness may have made a comment
10 directed toward you, I don't know if that's what you
11 intended?

12 A. I meant it as a joke, that's all I won't do that
13 again.

14 THE COURT: Yes, okay. Let's.

15 MR. STEIN: So --.

16 THE COURT: Let's not joke in this case but
17 there's a lot of sensitivity and you know -- let's keep any
18 jokes to a minimum. I know you want to be lighthearted but
19 there's a lot of sensitivities here?

20 A. Okay.

21 THE COURT: So be mindful.

22 Q. BY MS. IBARRA: And we're still actually in
23 opinion one so --?

24 A. We are still on opinion one and --.

25 Q. We left off when a lawyer gives legal advice and?

26 A. Right.

27 Q. And the opinions can be -- or the -- why don't you
28 take over?

1 A. Yes so when he says I'm not your lawyer and gives
2 legal advice he has formed an attorney-client relationship
3 but for the purpose of the Evidence Code whatever is said,
4 there's no expectation of privacy to that matter can be
5 compelled and I will give you some authority and discussion
6 of that which is California state bar opinion 2003 dash 16
7 one and People versus geo oh ji o n .

8 MR. FORDYCE: S it's a 1995 case, nine Cal fourth
9 one '96.

10 MR. FORDYCE: Objection Your Honor relevance.

11 THE COURT: What's irrelevant.

12 MR. STEIN: And objection misstatements --
13 misstates prior testimony, Mr. Mills said nothing of the
14 court.

15 MR. FORDYCE: I'm also not aware of anything where
16 we've talked about expectation of privacy, this is not
17 create not an attorney-client relationship and not the
18 distinction between confidentiality issues and
19 attorney-client relationships.

20 THE COURT: Maybe there's --.

21 MS. IBARRA: Yeah Mr. Margolis is actually trying
22 to explain.

23 THE COURT: Well let him do his own explaining.

24 MS. IBARRA: Yeah.

25 MR. FORDYCE: Okay.

26 THE COURT: So there is -- this is the issue, it's
27 unclear, he's talking about privacy issues versus
28 confidentiality. It's unclear so I'm going to sustain the

1 objection, he wants to clarify what he's referring to, let
2 him clarify but the way he stated it, those are
3 different -- potentially different concepts to maybe we
4 should let him explain.

5 MS. IBARRA: Yes he might be referring to Mr.
6 Mills' testimony and he's trying to clarify it so why don't
7 I ask him.

8 MR. STEIN: Forgive me, Your Honor. Our objection
9 is this misstates Mr. Mills' testimony. He's trying to
10 reduce Mr. Mills' testimony to some absurd point that Mr.
11 Mills never made. We're talking about the very simple
12 point, very basic as to what happens here. One expert, Mr.
13 Mills, said if two people agree they're not going to have
14 an attorney-client relationship then the lawyer can safely
15 give legal advice and not create an attorney-client
16 relationship under California law, he is saying that's not
17 the case, but he's trying to now reduce Mr. Mills' point to
18 some absurd or different points than that.

19 MS. IBARRA: Why don't I ask him why he thinks --.

20 THE COURT: Let's clarify.

21 Q. BY MS. IBARRA: Mr. Margolis why do you think
22 these citations evidence code 961, 962 are relevant to Mr.
23 Mills' testimony in your estimation?

24 A. All right. There has been the confusion as to
25 when is an attorney-client relationship, and the argument
26 has been if I say I'm not your attorney, therefore, I'm not
27 your attorney and you can't -- there is authority for this
28 and Mr. Mills says in rare cases no, sir certain cases and

1 then he passed on, he says that that's true, those cases
2 are so that there's no confusion about it, that those have
3 to do with the Evidence Code, they don't have to do with
4 whether in fact an attorney-client relationship has been
5 formed and that's what I was talking about. So if you say
6 I'm not your lawyer and yet you form an attorney-client
7 relationship by providing the legal advice, then whatever
8 was stated, it's true that's considered not attorney-client
9 in terms of protecting what was said but the relationship
10 still exists and I was trying to separate that out because
11 it appeared that they were trying to confuse those issues.

12 Q. So just to be clear, so you're making a
13 distinction between privileged communications and the
14 actual?

15 A. Yes.

16 Q. Attorney-client relationship.

17 MR. STEIN: Can I now state my objection, it
18 misstates the testimony, Mr. Mills did not make any such
19 point that there is an attorney-client relationship but not
20 based on evidence 901 or 902, it's a very simple point, if
21 Mr. Mills said if two people agree we're not going to form
22 an attorney-client relationship and then the attorney gives
23 legal advice pursuant to that agreement, just -- he talked
24 about being at a soccer game with the kids and on the
25 identify sidelines and somebody says you're not around
26 attorney can I ask you, answered I don't want to be my your
27 attorney, the guy says I don't want to be your attorney and
28 then he renders the advice.

1 THE COURT: Mr. Stein if you're going to object
2 please.

3 MR. STEIN: Taking place.

4 THE COURT: The objection and the agreement.

5 MR. STEIN: He's looking at the exact situation.

6 THE COURT: What's the objection.

7 MR. STEIN: The objection is emits state Mr.
8 Mills' testimony.

9 THE COURT: Overruled I'll remember Mr. Mills
10 testimony you can cross him.

11 MS. IBARRA:

12 Q. Mr. Margolis are you concluded on opinion 1?

13 A. I'm done.

14 Q. Are you sure?

15 A. I'm never sure of everything.

16 Q. I need you to be sure.

17 A. That's all I can tell you right now.

18 Q. Opinion Number 2 of Mr. Mills, this is Mr. Mills'
19 opinion, assuming arguendo Mr. Stein formed an
20 implied-in-fact attorney-client contract with GT Tribe then
21 beginning only on the date of the implied-in-fact
22 attorney-client agreement there would be an attorney-client
23 relationship between Mr. Stein and GT Tribe, if this is the
24 case Mr. Stein must meet the requirements of California
25 rules of professional conduct CRPC rules 3-300 and 3-310.
26 The SMDC agreement appears to comply with both. Mr.
27 Margolis what is your opinion and conclusion about Mr.
28 Mills' second opinion I just read?

1 A. He's wrong. He's just wrong. He's misstated the
2 law and as I mentioned last time, case law is interpreted
3 the rules requiring that the attorney conform fiduciary
4 standards of full disclosure and that means not just full
5 disclosure of the terms but also disclosure of the
6 existence of a conflict and that you must warn the client
7 against -- the attorney must warn the client against
8 himself just as he would against a third person and that --
9 a citation to that is Beery versus state bar it's 1987, 43
10 Cal third 802 at 813. And now Mr. Mills is sort of right
11 about it, he says if there's independent counsel that
12 changes that. He's right if there's independent counsel
13 then the attorney is released in part from that
14 responsibility. Mr. Mills failed to cite to that case.
15 That case is Ferguson versus Yaspan, it's 2014, 23 three
16 Cal.App.4th '67 six at pages '68 seven to '68 eight, it
17 does not relieve the attorney of the duty to disclose the
18 full terms in existence of a conflict. It only re leaves
19 the duty of the obligation to advise the clients of the
20 pros and cons because the independent attorney can advise
21 the client of the pros and cons. And so here Mr. Stein
22 never disclosed the existence of the conflict. Nor did he
23 disclose the existence --.

24 THE COURT: When you say pros and cons, are you
25 referring to pros and cons of continuing the relationship,
26 pros and cons of -- assuming that's what you mean but I
27 don't want to put words in your mouth?

28 A. Yes pros and cons ever entering into that

1 relationship because of conflict, taking into account the
2 conflict.

3 THE COURT: And when you say disclose the
4 existence of a conflict, I have a question about what
5 constitutes adequate disclosure, is it there's a conflict
6 between you tribe and me Mr. Stein or is it there's a
7 conflict between you tribe and me Mr. Stein and the
8 conflict is X and a full description of what the conflict
9 is, it's unclear to me what complies, what type of
10 disclosure complies?

11 A. You're dealing what client you can't just say we
12 have a conflict, you have to say here's what it is and then
13 ordinarily you have to say these are the pros and cons of
14 entering into it, you might be hurt by this, you might want
15 to take this into account you might want to take that into
16 account but you don't have to go that far if you've got
17 independent counsel, independent counsel will go to the
18 pros and cons but the existence of the conflict has to be
19 laid out. And he never closed that.

20 MR. STEIN: Objection misstates the testimony in
21 this case.

22 THE COURT: Overruled?

23 A. Also as we talked about last time, I said there
24 was not independent counsel and I was asked in particular
25 do you need independent counsel, the answer is no, what you
26 do need is to advise the client to obtain independent
27 counsel, I'm going to give you have the citation, rose
28 versus state bar, this is just one citation, it's well

1 established, 1989, 49 Cal third six 46 at 6:30 -- at '66
2 three. But there was no statement here that you have the
3 right to independent counsel and there was -- and you also
4 have to give the client an opportunity to obtain
5 independent counsel. Here there was no telling them they
6 should get independent counsel and there was no opportunity
7 because the client was led to believe they had behind
8 counsel and they didn't have independent counsel for the
9 reasons we stated before, one, Mr. Stein actually dominated
10 and controlled the independent counsel, independent counsel
11 had a retainer agreement that caused her to not be
12 independent and also -- what was the other point I made?
13 No, okay.

14 MR. STEIN: And I'd like to again object he's
15 hypothesizing facts that are opposite of the facts of this
16 case when the agreement says to get independent counties
17 saying that the agreement does not say to get independent
18 counsel.

19 THE COURT: All right.

20 MR. STEIN: He second he's saying.

21 THE COURT: Mr. Stein I'm sure you'll point that
22 out on cross?

23 A. It was my understanding you were saying you had
24 independent counsel.

25 THE COURT: Well is all --.

26 MR. STEIN: Objection vague.

27 THE COURT: Little bit of vagueness there. Is the
28 rule if you don't tell the client you may go out and get

1 independent counsel, if the client actually has independent
2 counsel does that sort of absolve the fact that the
3 attorney didn't actually state in the agreement?

4 A. That comes up a lot and I don't know of any cases
5 that deal with that. However here it's different because
6 there wasn't independent counsel but the tribe was led to
7 believe that they did, so they weren't warned, put on
8 notice that they should get independent counsel.

9 MR. STEIN: Again objection Rae Lamothe's
10 testimony was that she was independent and all these things
11 that he's assuming are false.

12 THE COURT: Overruled.

13 Q. BY MS. IBARRA: Mr. Margolis we're still on the
14 second opinion, do you have anything further on this?

15 A. No. So 3-300 was violated because there was not a
16 full disclosure which would have included a statement as to
17 the conflict, that there was conflict and what it was, and
18 that it was not a statement -- first of all there was not
19 independent counsel but you don't need independent counsel
20 but they were not given -- they were be told to get
21 independent counsel or that they could get independent
22 counsel, they were told that they had independent counsel
23 and so for that reason they were not given an
24 opportunity -- they weren't given a reasonable opportunity
25 because they thought they had independent counsel. Okay.

26 Q. Okay. So anything more on the second opinion
27 or?

28 A. Yes Mills says that 3-310 has the same issue to

1 it, he says that there's a --.

2 Q. Just for clarity, what is 3-310?

3 A. It's rule of professional conduct, avoiding the
4 representation of adverse interests, and he says that the
5 disclosure requirement for that, which is -- I'm going to
6 read it to you, disclosure means informing the client or
7 former client of the relevant circumstances of the actual
8 and reasonably foreseeable adverse consequences to the
9 clients or former client.

10 Q. So is that the actual rule?

11 A. That's the actual rule, yeah.

12 Q. Okay.

13 A. And he says well it's really the same thing
14 because just as you don't have to advise the client, he's
15 wrong, of a conflict in 3-300, it applies also at 3-310,
16 that's simply not true. The case is I can't say pan and I
17 can't say pan refers to 3-300 and I don't know of any law
18 that would apply to that same principle to 3-310. Those
19 are two different kind of conflicts which I will get into
20 later so disclosure is required under 3-310 whether there's
21 independent counsel or not.

22 THE COURT: Yes.

23 MR. STEIN: Objection misstates Mr. Mills'
24 testimony, he made very clear time and again that rule
25 3-300 is very different from 3-310. He's stating his
26 opinion, he's belittling Mr. Mills' opinion saying those
27 two are the same issue that misstates what Mr. Mills'
28 opinion was I'd ask to not stricken all of his comments

1 relate to go 3-310.

2 MS. IBARRA: Objection that misstates Mr.
3 Margolis' testimony.

4 THE COURT: Motion to strike denied.

5 Q. BY MS. IBARRA: Mr. Margolis, do you want to
6 clarify?

7 A. No, I don't want to testify, I said it clearly
8 that in his testimony and in his written opinion Mr. Mills
9 said that on the point of whether you have -- as to billion
10 you have to give full disclosure that the relief that you
11 would get under the Yaspan case also applies to 3-310 and
12 it doesn't because there's different kinds of conflicts.

13 Q. Okay that's pretty conclusive, is there any --.

14 MR. STEIN: Objection there's --.

15 THE COURT: Oak overruled same objection right.

16 MR. STEIN: Yes Your Honor.

17 Q. BY MS. IBARRA: Anything else on the second
18 opinion?

19 A. Just a minute let me see. No I'd go onto the
20 third one.

21 Q. So the third opinion of Mr. Mills is third opinion
22 assuming arguendo that one, Mr. Stein formed an
23 implied-in-fact attorney-client contract with GT Tribe, two
24 beginning on the date of the implied-in-fact
25 attorney-client agreement there was an attorney-client
26 relationship that required compliance with rules 3-300 and
27 3-310 but three, Stein failed to completely comply with
28 rule 3-300. Mr. Margolis what is your own opinion and

1 conclusions about Mr. Mills' opinion, third opinion?

2 A. Well one of the points that he makes is that any
3 violation would have been after September of 2003 and the
4 basis for that is as I states is there was no
5 attorney-client relationship prior to then and I am
6 assuming based upon what I've been told what the evidence
7 is but anyway, my opinion is based upon that in fact there
8 was around attorney-client relationship at the time of
9 entering into the SMDC agreement in 2001, he was advising
10 the tribe on the merits of it and advising them to sign it
11 and they had no attorney at all, forget independent
12 counsel. And so there was an attorney-client, if there was
13 a violation it started from then. And Mr. Mills also
14 referring to the Kirsh case and I think miss applies it.
15 He says that that case stands for the proposition that you
16 can't use the violation of 3-300 offensively to obtain an
17 advantage. That's not what I read in that case. What the
18 case found was that 3-300 -- 3-300 violation in that case
19 was not of a fiduciary nature and was just a technical
20 point to obtain an unfair advantage. And the court wasn't
21 going to allow the proponents of that argument to benefit
22 by it so that here it's not -- this is not just a tech -- a
23 technical point to obtain unfair advantage. And the whole
24 point that you can't use it offensively is not a principle
25 of the Kirsh case, the principle of the Kirsh case is that
26 you can't use -- you can't in bad faith be using a non
27 fiduciary violation in order to gain the advantage and
28 that's not the case here. Because here you have a

1 violation of the fiduciary duty for a full and un biased
2 disclosure and a violation requiring of -- violation of the
3 requirement of undivided loyalty, it's not just technical.

4 THE COURT: So are you saying that if there's a
5 technical violation but then the attorney didn't breach any
6 fiduciary duty, there's no damage to the client then the
7 client should be allowed to use that technicality
8 offensively to say I'm not going to pay you for what you
9 did?

10 A. I think what's what the Kirsh case said, yes but
11 it is not what Mr. Mills said gnaw can never use it
12 offensively and that --.

13 THE COURT: Okay?

14 A. Yeah okay.

15 Q. BY MS. IBARRA: We're still on the third opinion?

16 A. Okay.

17 THE COURT: Does that affect quantum meruit.

18 A. Yeah it does, I'm just getting to that.

19 MR. STEIN: And Your Honor I want to object
20 because again the Kirsh case, he just stated the Kirsh case
21 then he threw in fiduciary versus non fiduciary, the Kirsh
22 case dealt with fiduciary duties and he's saying that it
23 didn't, he said first it did and now he's saying it didn't
24 and that's the distinction here?

25 A. That's not.

26 MS. IBARRA: That's --.

27 THE COURT: Well you can raise that on cross, if
28 you have the facts of Kirsh you can raise it on cross with

1 Mr. Margolis?

2 A. The Kirsh case does deal with fiduciary issues.
3 The issue regarding the particular violation here was
4 considered technical and not a fiduciary violation. And so
5 that's what it is and so the -- okay I'm not going to go
6 there.

7 Q. BY MS. IBARRA: Okay.

8 A. But that's the conclusion. Also now, as to --.

9 Q. So we're still on opinion three?

10 A. Yeah. So if there are violations that persuade
11 the relationship, then the attorney can be denied all fees,
12 even quantum meruit. And of course Mr. Mills did not cite
13 a case for his opinion that that wasn't the case but it is
14 the case and one case on there, Fair versus Bakhtiari and
15 it's 2011, 195 Cal.App.4th 1135 at 1169.

16 MR. FORDYCE: Objection for the record, that
17 misstates Mr. Mills' testimony.

18 THE COURT: I think that might, I think he did say
19 that quantum meruit can be denied in its entirety on one
20 end or could be given to the full extend on the other so he
21 did have a range from zero to full quantum meruit depending
22 on the circumstances, I do think that that's correct, I
23 think that Mr. Mills did acknowledge that such a continuum
24 existed.

25 MS. IBARRA: The court is deciding the case so --

26 A. So he.

27 Q. BY MS. IBARRA: So Mr. Margolis, what his
28 distinction is --

1 THE COURT: No let him say the distinction.

2 A. No my distinction is I was referring to his
3 testimony, I think they're referring to his statement time,
4 not in his --

5 THE COURT: Well correct?

6 A. In his written report.

7 MS. IBARRA: Now the only one that you didn't re
8 view waters the day that he was here for like five
9 minutes?

10 A. Well I don't think I read the cross-examination
11 was there a cross-examination?

12 Q. Yeah there was.

13 A. I didn't read the cross-examination. Anyway if
14 I'm wrong, fine, we both agree that quantum meruit can be
15 denied, that all fees can be denied depending upon the
16 egregiousness.

17 Q. Okay anything further on the third opinion?

18 A. Fourth opinion.

19 Q. So you're done with the third opinion?

20 A. Yeah.

21 MR. FORDYCE: Actually Your Honor would this be a
22 time to take a quick break it's been almost exactly an
23 hour.

24 THE COURT: Sure let's take 10 minutes.

25 MR. FORDYCE: Thank you.

26 (Break taken.) 11:19 AM to 11:26 AM.

27 THE COURT: Gabrielino versus Stein, BC361307.

28 You may continue.

1 MS. IBARRA: Okay.

2 MS. IBARRA:

3 Q. So we left off at the third opinion and you were
4 concluded so we were about to start the fourth opinion, so
5 this is Mr. Mills' fourth opinion, quoting assuming argue
6 end oh that one, Mr. Stein informed an implied-in-fact
7 attorney-client contract with GT Tribe, two, beginning on
8 the date of the implied-in-fact attorney-client agreement
9 there was an attorney-client relationship that required
10 compliance with rules 3-300 and 3-310 but Stein failed
11 completely to complain with rule 3-310. If this were the
12 case, then SMDC -- then the SMDC agreement remains
13 enforceable and all amounts remain due and owing regardless
14 of any rules 3-310 violation. Mr. Margolis what is your
15 conclusion and opinion about Mr. Mills fourth opinion?

16 A. He's wrong. He's wrong. He said that 3-310 does
17 not apply because it doesn't relate to transactions between
18 an attorney and a client but that's not what this is about,
19 that's not what this issue regarding 3-310 is about, it's
20 true that 3-300 relates to attorney-client transactions and
21 3-310 relates to conflicts in representing clients, those
22 are two different kinds of conflicts. Here Jonathan Stein
23 not only had a transaction with the tribe but he
24 represented SMDC at the same time that he represented the
25 tribe, so both of those rules apply. And again the
26 disclosure that's required under 3-310 which is not negated
27 by the Aspen case is that it means in informing the client
28 or former client of the relevant circumstances and the

1 actual and reasonable foreseeable adverse consequences of
2 the client or former client. So Mr. Mills says that the
3 remedy here under 3-310 would be disqualification because
4 he's only looking at -- well he says it would only be
5 disqualification not disgorgement or preclusion of fees,
6 but he's wrong and he failed to mention an extremely
7 important case, he doesn't mention any case but this is a
8 particularly important case it's Sheppard Mullin Richter
9 Hampton LLP versus J M manufacturing company Inc., it was
10 decided January 29, 2016, 244 Cal.App.4th 59 zero and it
11 deals exactly with this subject, it deals with rule 3-310.
12 Now that's a case that was accepted for review by the
13 California Supreme Court but it can be cited under the new
14 appellate rules, not as precedent but for its persuasive
15 effect. And in that case the court said -- well that you
16 can't quote any fee if the conflict is egregious enough,
17 what's egregious enough? 3+When there's a conflict, when
18 there's an actual conflict that's pretty much egregious
19 enough, that's pretty much what the court says and that's
20 pretty much what the fight is about in terms of before the
21 Supreme Court so if there's an actual conduct of Sheppard
22 Mullin that would be sufficiently egregious to preclude
23 fees in quantum meruit particularly in a case like this
24 where the conflict persuade joinder relationship.

25 MR. STEIN: I didn't want to interrupt the
26 opinion.

27 THE COURT: Yeah sound like you.

28 MR. STEIN: Objection he's vague as to what fees,

1 he's saying SMDC fees, there's no attorneys' fees to did I
2 say gorge here and that the Sheppard Mullin V J M
3 manufacturing was did I say gorgement of the attorneys'
4 fees earned within the attorney-client relationship when
5 there is a conflict that's not disclosed.

6 THE COURT: Okay.

7 MS. IBARRA: Can I ask him about it.

8 MR. STEIN: Here we already have testimony that
9 there were no attorneys' fees earns and therefore, this did
10 I say gorgement is not the same as what Mr. Mills was
11 talking about.

12 THE COURT: We should clarify that.

13 Q. BY MS. IBARRA: Mr. Margolis?

14 A. Yes let's clarify that.

15 Q. Did you clarify the fees issues and the fact that
16 there are no attorneys' fees alleged here.

17 MR. STEIN: Your Honor can I.

18 THE COURT: Let her.

19 MR. STEIN: Your Honor can I.

20 THE COURT: Wait a minute, Ms. Ibarra is trying to
21 finish her statement, she's a soft spoken individual
22 sometimes you can't hear her but she was trying to speak.

23 MR. STEIN: Uh-huh.

24 Q. BY MS. IBARRA: So Mr. Margolis you were going to
25 explain how the attorney-client -- I mean I'm sorry how far
26 the attorneys' fees weren't at issue here and how this case
27 still applies.

28 THE COURT: Before you answer?

1 A. No.

2 THE COURT: Mr. Stein had something to say.

3 MR. STEIN: Yes simply because Mr. Margolis keeps
4 making faces at me and I'd like the court to instruct shim
5 him not to make faces at me and make phases like an idiot
6 whenever I talk?

7 A. I don't recall doing that.

8 MR. STEIN: The court has already instructed him
9 once we'd like a second instruction?

10 A. And I don't recall the court instructing me that I
11 was making faces.

12 THE COURT: No.

13 MS. IBARRA: I haven't seen any faces.

14 THE COURT: I didn't instruct Mr. Margolis
15 regarding any faces, I have haven't seen him making any
16 faces, if it's happening, then obviously stop it, I don't
17 know if it is, I will try to be aware if that's going
18 object.

19 MR. STEIN: Thank you that's all, okay.

20 THE COURT: All right thank you.

21 MS. IBARRA: I'm not aware that he's making faces
22 but would you like to address the issue.

23 A. Yes.

24 Q. Between attorneys' fees and other did I say
25 gorgement?

26 A. Yes. It's not just disgorgement, it's preclusion
27 ever any fees, quantum meruit or any and disgorgement, if
28 you had disgorgement here that wouldn't apply but in terms

1 of being deprived of any fees that might apply. The
2 Sheppard Mullin case is not restricted to disgorgement.
3 And also the Sheppard Mullin case does not purport to
4 change the law or add anything to it it's an interpretation
5 of the law and there's a huge discussion in there very
6 detailed scholarly discussion that Mr. Mills did not go
7 into.

8 Q. One more thing about the Sheppard Mullin case,
9 well what about if fees -- if it's unclear whether fees are
10 included in the ultimate recovery that the attorney-client
11 attorney is seeking if it's unclear what -- if the attorney
12 is seeking damages from the client but it's unclear if any
13 of those portions might be attorneys' fees.

14 MR. STEIN: Objection leading.

15 THE COURT: Overruled?

16 A. What you would do is separate it out, that part
17 which is fees would be precluded. But in the other damages
18 could be dealt with separately.

19 THE COURT: When you say dealt with separately,
20 for example let's say you have a business contract, the
21 attorney and the client end near a business relationship
22 and the attorney earns fees under that business contract
23 while he was an attorney for that client, then are those
24 fees earned under that contract, are they unearned, are
25 they if you understand that need to be disgorged?

26 A. The fees -- if there's an actual conflict under
27 Sheppard Mullin he's not entitled to those fees so that if
28 he did obtain them they'd be disgorged, if they hadn't been

1 obtained, then he'd not be entitled to them.

2 THE COURT: Say that again?

3 A. Okay under except mull if there's an actual
4 conflict at this time, then the attorney would not be
5 entitled to any fees because that would be because of the
6 actual conflict, it would be egregious enough to be that
7 resolve.

8 THE COURT: Burdened under that business contract?

9 A. Yes.

10 THE COURT: Not a defective retainer, we're
11 talking about a defective business relationship. In other
12 words you have a retainer agreement there's something
13 defective about it because you didn't advise the client of
14 a conflict or you didn't put some advisement in there or
15 whatever?

16 A. Oh I see I see.

17 THE COURT: So I'm trying to make the distinction
18 an defective attorney-client written retainer agreement and
19 a did he fixtures tiff business contract with an attorney
20 and the attorney is giving legal advice under that
21 contractor deemed to have been giving advice under that
22 contract?

23 A. Right. The attorney who is entering into this
24 agreement is suing not for attorney-client fees is still
25 held to 3-310 because he's an attorney and eves dealing
26 with his client. And so the rules of professional conduct
27 apply to that also.

28 THE COURT: So does Sheppard Mullin address that

1 or does Sheppard Mullin apply to that?

2 A. No I don't think Sheppard Mullin deals with that
3 particular issue but there are other cases which say if
4 it's an attorney and he's entering into an agreement with a
5 client that unless he meets 3-300 -- he could lose all
6 benefit in terms of fees and the buck Sherry case is an
7 example that far.

8 THE COURT: And Bakhtiari wasn't dealing with an
9 defective retainer agreement it's dealing with a business
10 relationship with the client.

11 A. Yes.

12 THE COURT: All right?

13 A. I believe so, I haven't read it for a while but
14 that's my recollection on it.

15 THE COURT: Occupation okay Mr. Stein you're
16 standing you'd like to say something.

17 MR. STEIN: Yeah and I want to do it the way the
18 court is allowing me to do it. Your Honor at this point we
19 are so accumulating so many new materials including cases
20 currently in front of the Supreme Court that I would like
21 to bring my expert back to address this huge litany I've
22 got about 12 points already of new materials that while
23 they address the Mills opinion they bring in new fact, new
24 argument, enough case law never before given by him and
25 then there for Mr. Mills should have an opportunity to
26 respond.

27 THE COURT: The problem with that that is the
28 nature of registered nurse right, they don't know what

1 your -- they hear your witness, what they say and then they
2 come back with a registered nurse to that and so you've
3 never heard it before, that's true. How is it new, it's
4 addressing the opinions.

5 MR. STEIN: No it's not what he's doing is he's
6 going well beyond the scope of Mr. Mills' opinion by being
7 in extraneous circumstances, extraneous facts and
8 extraneous case law and saying well while we're on the
9 topic how about this, these are not the original cases that
10 he cited.

11 THE COURT: That's true they are not some of them
12 are not because they're addressing the ones you're expert
13 brought up, that's the nature of of rebuttal they're
14 addressing what your expert brought up and they may not
15 enough cases but until he hears what your expert has to say
16 he's not going to raise those cases.

17 MR. STEIN: The court is exactly right it is the
18 nature the rebuttal but there is a certain point in which
19 rebuttal experts and what you have is a new opinions and
20 the reason I've of waited until now is we are way beyond
21 the that, we are way beyond that and I thought to wait
22 until a discussion of the Sheppard Mullin and 3-310 in fact
23 reaches beyond anything that Mr. Mills has not considered
24 any of this and it's not part of his opinions and we should
25 be able to bring him back out of fundamental fairness and
26 to avoid a mistrial which we have constant invitations to
27 take into account.

28 MR. FORDYCE: And Your Honor this one I join with.

1 MS. IBARRA: This is law, this is Mr. Mills had
2 every opportunity to look up this law and further explain
3 his own opinion without having Mr. Margolis come in and
4 give further clarification of it.

5 MR. FORDYCE: Your Honor.

6 MS. IBARRA: There's nothing -- there's nothing
7 that precluded him from having done any of the research
8 that Mr. Margolis did.

9 MR. STEIN: .

10 THE COURT: So you're saying these are not new
11 cases.

12 MS. IBARRA: (Ditto).

13 THE COURT: All right.

14 MR. FORDYCE: And two issues, one there is joist
15 add duck tiff action [ERS] um, at what point does the
16 expert stop and then of course the second issue is these
17 two bites at the apple, this is clearly two bites at the
18 apple, we have enough opinions here which do have issues
19 that are not raised by Mr. Mills and are not [TPHOEU] be
20 responded to on rebuttal as if it's brand new expert
21 testimony.

22 MS. IBARRA: What specific new thing is he saying
23 that he's saying wasn't addressed to Mr. Mills? Everything
24 is in direct response to Mr. Mills' very long approximately
25 and the basis for his expert opinions.

26 MR. STEIN: That's not true at all.

27 THE COURT: Well you'll have to cite -- if you
28 have want to, you can put it in writing but right now I

1 think it's pretty clear he's going through each opinion
2 that Mr. Mills rendered and he's addressing them, he's
3 count erg them, now he may be referring to new cases but
4 the cases existed before either of them testified so I
5 don't see that as a basis for recalling milliliters Mr.
6 Mills but I'll be open to the idea so let's just keep
7 going.

8 MR. STEIN: I do want to say very clearly and I
9 want to make sure to make a record of it, is we move for a
10 mistrial if Mr. Mills -- at this point and when he's
11 finished if Mr. Mills cannot come back we would like the
12 court to consider our motion made today the a- mistrial
13 that allowance of the testimony that's two bites of the
14 apple the allowance to bring in new opinions, at lacks
15 foundation for him to use writings that were not shared
16 with him but eves reading from them while testifying and
17 the clear violations, the repeated violations in his
18 testimony of people V Sanchez.

19 THE COURT: Well I disagree with your recitation
20 but you know you can put your motion for mistrial if you
21 have one in writing with points and [STKPHORTS] recitation
22 of what you think was irregular or what the problems were,
23 okay.

24 MS. IBARRA: And can I request that such motion
25 actually be served on me at this time.

26 THE COURT: Of course, Ms. Ibarra of course any
27 writing submitted to the court like that has to be served.

28 MS. IBARRA: Before it was filed, just to be

1 clear.

2 Q. BY MS. IBARRA: We were in the fourth opinion Mr.
3 Margolis?

4 A. Right, I'd go on to the seventh opinion.

5 MS. IBARRA: Fourth opinion, you don't want to do
6 the fifth and sixth opinion?

7 A. No I think what I've seen a is encompassed in a
8 lot of that and I have just want to go on to the seventh
9 opinion.

10 Q. Do you want to say whether you agree or disagree
11 with it?

12 A. I don't have the -- okay, would you read like you
13 would before .

14 Q. I'll read the fifth opinion. This is Mr. Mills'
15 fifth opinion. Assuming arguendo Mr. Stein did have an
16 implied-in-fact attorney-client contract with GT Tribe two
17 beginning on the date of the implied-in-fact
18 attorney-client agreement there was around attorney-client
19 relationship that required compliance with rules 3-310 and
20 3-300 -- 3-300 and 3-310 and third Mr. Stein failed to
21 comply with one or both 3-300 or 3-310 if this were the
22 case then GT Tribe still cannot establish the elements
23 necessary to prove the legal for legal map?

24 A. Right I didn't have address that because he went
25 far beyond an expert opinion He's doing say closing
26 argument about the facts and I'm not interested in it or
27 not.

28 Q. Do you agree with them or not, your conclusion.

1 MR. STEIN: Objection. Objection before he gives
2 his opinion. He's in qualified on legal malpractice, he's
3 qualified as a state bar examiner. He spent 44 years in
4 front of state bar and as part the state bar, he has not
5 had any practice in the legal malpractice. Mr. Mills on
6 the other hand, his daily practice was shown to be full
7 legal malpractice cases include in re: Kirsh, which was
8 one case that he handled personally.

9 THE COURT: Well is there a legal malpractice
10 claim.

11 MS. IBARRA: There is a legal malpractice claim.

12 THE COURT: Okay and isn't there case law that
13 suggests that a violation of ruled of conduct can result in
14 legal malpractice so I think that it should be clear,
15 that's my understanding of where the testimony has some
16 foundation is because of that.

17 MR. STEIN: The court makes a good point, louver
18 that's not what -- that would again be new matter having
19 nothing to do with the Mills opinion, what the Mills
20 opinion is --.

21 THE COURT: Well Mills opinion says if this were
22 the case then GT Tribe still establish necessary to prove
23 the case for any underlying legal malpractice so clearly
24 legal malpractice is something your expert addressed, all
25 these -- all the claims concerning legal malpractice as far
26 as I can tell are based on violations of the rules of
27 professional conduct so there is no other basis as far as I
28 can tell, it's been presented in trial, so I'm going to

1 overrule the objection and allow the witness to testify on
2 that but it isn't new, it's something that client -- that
3 your expert haze-d.

4 Q. BY MS. IBARRA: Mr. Margolis do you want to
5 address this?

6 A. No.

7 Q. Or do you want to just stand by your prior
8 testimony on this topic?

9 A. Stand by my prior testimony.

10 Q. So Issue 6, same thing Mr. Mills (sic) 6 is
11 assuming arguendo that Mr. Stein had an implied-in-fact
12 attorney-client contract with GT Tribe, two beginning on
13 the date on the implied-in-fact attorney-client agreement
14 there was an attorney-client relationship that was not in
15 compliance with 3-300 and 3-310 and Mr. Stein failed to
16 compliant with one or both of rule 3-300 or 3-310. If this
17 were the case then GT Tribe still cannot establish all of
18 the elements of the breach of fiduciary duty of an
19 attorney?

20 A. I've already answered that and I would stand.

21 Q. On your prior testimony?

22 A. On my prior testimony.

23 Q. So --.

24 THE COURT: So Ms. Ibarra let him testify, okay,
25 don't interrupt him with your comments h let him testify.

26 MS. IBARRA: Okay we're moving to Number 10?

27 A. No seven.

28 Q. I'm sorry seven, seventh opinion, GT Tribe

1 separately claims that there is a breach of fiduciary duty
2 by Mr. Stein as an officer of GT Tribe not as its attorney.
3 Mr. Stein had no fiduciary duty as an officer of GT Tribe
4 for two complimentary reasons, either reason is sufficient
5 to defeat a claim of breach of fiduciary duty as an
6 officer. What is your opinion and conclusions regarding
7 Mr. Mills' seventh opinion.

8 MR. STEIN: Objection he's not qualified as an
9 expert on the fiduciary duty of corporate officers,
10 certainly not for unincorporated associations officers, and
11 not for officers of an Indian tribe he specifically said
12 he's not represented any of those other than state bar
13 proceeding and therefore, when you are talking about
14 appropriate a non legal relationship that would have
15 nothing to do with a state bar proceeding, he has no
16 expertise. Mr. Mills on the other hand gave the expertise
17 that he had from his daily interaction at his work with
18 boards of directors, not for profit, private corporations
19 unincorporated associations, and the Cherokee Indian tribe,
20 the countries second largest Indian tribe.

21 THE COURT: So the objection is that he doesn't
22 have expertise to testify as to breache of fiduciary duties
23 of officers of corporations.

24 MR. STEIN: Or corporations or Indian tribes or
25 unincorporated associations.

26 THE COURT: Okay. Does he have some expertise in
27 that area?

28 Q. BY MS. IBARRA: Mr. Mills (sic) do you have any

1 expertise in this area that has bearing on this case?

2 A. My expertise has to do with attorneys obligations
3 in general that apply to all representations, and it has to
4 do -- the answer is yes, I have experience, I've been doing
5 for -- it too isn't actually 44, it's 43 years both as a
6 prosecute he at the state bar and also as someone
7 representing attorneys before the state bar and also
8 advising firms about ethical issues.

9 A. So I have the experience is as to fiduciary duty
10 and how it results relates to an attorney's ethical
11 responsibilities.

12 MR. STEIN: Again that's fiduciary duties of an
13 attorney, not the fiduciary duties of an officer, once
14 again he doesn't know -- he doesn't appear to photograph
15 the difference between officers that are president or that
16 are statutory officers or non statutory officers, he didn't
17 even know the difference between the GTGA authority officer
18 ship between being an officer of GT Tribe itself so he has
19 just stated what his expertise it doesn't amount to the
20 expertise to say you have a fiduciary duty not as an
21 attorney, that is Mr. Mills' testimony that GT separately
22 claims that's a breach of fiduciary duty by Mr. Stein as an
23 officer of GT Tribe, parens not as its attorney.

24 Q. BY MS. IBARRA: Mr. Margolis, do you have
25 expertise when an attorney is acting in a capacity as an
26 officer -- as a corporate officer for an entity?

27 A. Yes. I assume that -- or if I understand that
28 that person has a fiduciary duty then the rules of

1 professional conduct and other rules regarding attorney
2 conduct kick in and they're applicable and so I have dealt
3 with that on numerous occasions.

4 THE COURT: So you -- just so I'm clear, so you're
5 saying you have dealt with situations, factual situations
6 where an attorney as acted both as an officer of a
7 corporation and as an attorney?

8 A. Has acted.

9 THE COURT: Where there's a claim of that?

10 A. Where there's a claim of it, but also in
11 situations where there's no claim that the attorney acted
12 as an attorney but not act as an officer and therefore, had
13 a fiduciary duty and because of that fiduciary duty no
14 attorney-client relationship, the rules of professional
15 conduct applied.

16 THE COURT: Anyway.

17 A. Yes anyway.

18 THE COURT: All right.

19 MR. STEIN: But, Your Honor, here he's assuming
20 there was a fiduciary duty that exist. The opinion here is
21 that no fiduciary duty exists, he's assuming past what the
22 opinion is.

23 MS. IBARRA: But that's the basis of his -- that's
24 of the basis of his testimony.

25 THE COURT: And I understand that.

26 MR. STEIN: Well, forgive me, just to clarify,
27 just to clarify the basis of his opinions will be based on
28 the assumption that the fiduciary duty already exists.

1 THE COURT: Mr. Stein you can ask in cross, okay.

2 MR. STEIN: Very good, the court is correct Your
3 Honor thank you.

4 Q. BY MS. IBARRA: So Mr. Margolis what is your
5 conclusions regarding Mr. Mills' seventh opinion?

6 A. His opinion was that there was no breach of
7 fiduciary duty as an officer because it must be stated in
8 writing or there's no fiduciary duty. Even if there's no
9 fiduciary duty created by the SMDC contract, that fiduciary
10 duty can be created outside of the SMDC contractor it can
11 be created in violation of it. Mr. Mills Mills said that
12 when an attorney acts as a fiduciary duty outside of the
13 attorney-client relationship he's not bounds by the rules
14 of professional conduct and I believe that was in his
15 testimony. That's not true, that's simply not true it's a
16 misstatement of the law and there are two citation that's
17 I'll give you these are just examples, there's Lewis versus
18 state bar, 1973, nine Cal third '70 four at seven 13, and
19 again Beery versus state bar, 1987, 43 Cal third 802 at
20 eight 13.

21 MR. STEIN: Is this the time to object.

22 THE COURT: Yes.

23 MR. STEIN: Glenn he's misstating Mr. Mills'
24 opinion which is in black and white in front of him he's
25 saying that milliliters is saying.

26 THE COURT: Overruled misstates testimony as the
27 basis overruled.

28 MR. STEIN: Thank you Your Honor?

1 A. Okay Mr. Mills also testified that there was no
2 fiduciary relationship because the offices in question here
3 are not specifically provided by the statute and if they're
4 had not specifically provided by the statute they don't
5 exist. Certain things that are provided by statute would
6 be attorney-client, there would be a guardian-ward, a
7 trustor-trustee relationship, but -- but -- hang on a
8 second.

9 THE COURT: Yes you have an objection, you're
10 standing Mr. Stein.

11 MR. STEIN: Yes Your Honor I just don't want to
12 cut him off.

13 THE COURT: Yes.

14 MR. STEIN: It's just that he's now veered from
15 his own assumption, his assumption is there's no fiduciary
16 duty, there is fiduciary duty and that's it. He is now
17 attempting to define saying officers --.

18 THE COURT: But Mr. Stein what's your objection, I
19 want an objection and a ground.

20 MR. STEIN: Sure.

21 THE COURT: And this is all things you can cross
22 on.

23 MR. STEIN: He is not qualified to give the expert
24 opinion he's giving.

25 THE COURT: Overruled. Ground, okay, objection
26 ground?

27 A. Okay so. He says that -- and he's right, that in
28 kick offices that are involved here are not specifically

1 stated by the statute but he is wrong when he says that
2 therefore, they don't have any effect in terms of creating
3 a fiduciary relationship because they're not recognized by
4 the law. In fact he's wrong about that. If you look at --
5 I'm going to be quoting from Cal juror third association's
6 and clubs, section 37 and it says here, an officer under
7 the statutes pertaining to unincorporated associations is a
8 natural person such as a unincorporated associations,
9 share president secretary, chief financial officer or other
10 position of authority that is established pursuant to the
11 association's governing principles.

12 MR. STEIN: Objection that is -- the same
13 objection before, the ground is he is not qualified to give
14 an expert opinion on the fiduciary duties -- on whether
15 fiduciary duties exist for non -- for an unincorporated
16 association.

17 THE COURT: Overruled. I think he was just
18 reciting the statute.

19 MS. IBARRA: Yeah.

20 THE COURT: Was that a statute you were reciting.

21 MR. STEIN: No he --?

22 A. I was citing to Cal juror which cites to a statute
23 which is Corporations Code 180 25.

24 THE COURT: Okay.

25 MR. STEIN: In other words he's saying when a
26 fiduciary duty exists on the part of an officer or not and
27 that's exactly what he's admitted that he does not have the
28 expertise for.

1 THE COURT: Overruled?

2 A. Okay. Also, he says that -- as I mentioned that
3 the -- if there's a fiduciary relationship, it has to be
4 established by statute, as I mentioned, guardian, trustee,
5 attorney-client, that's not true, that's not the law. You
6 can have a fiduciary duty established because of a
7 relationship of trust and dependency where an individual is
8 led to believe that -- and understand that they can depend
9 on an individual to look out for their interests primarily.
10 And you don't have to have a particular role stated by
11 statute. So Mr. Mills is wrong. Now the case on that, a
12 case on that which discusses it is Barbara A versus John G,
13 1983 case, 145 Cal.App. 3d 369, 38 two at 38 four. Mr.
14 Mills --.

15 MR. STEIN: May -- before he goes on if I can
16 again -- same objection.

17 THE COURT: Same ruling.

18 MR. STEIN: Thank you Your Honor.

19 THE COURT: I'll accept it as a continuing
20 objection.

21 MR. STEIN: Thank you Your Honor.

22 THE COURT: And it will continually be overruled
23 unless there's some change.

24 MR. STEIN: Very good.

25 THE COURT: So you can understand it's a
26 continuing objection I guess that.

27 MR. STEIN: As long as it's on the record I'll
28 stay seated Your Honor?

1 A. And again Mr. Mills relies on his assumption that
2 Mr. Stein's role as officer was simply nominal, I'm not
3 quite sure what nominal means, but I believe it means he
4 doesn't perform any of the duties, it's just a title but
5 the evidence shows that he was extremely and intensely
6 involved in the management of the tribe so it was not a
7 just nominal. And also Mr. Mills himself when he's dealing
8 with the issue of best informed business judgment states
9 this, when he was here, he says additionally Mr. Stein used
10 his informed business judgment in the best interest of the
11 GT Tribe, the organization. Mr. Stein acted as CEO of GTGA
12 to save guard the personal information of GT's -- of GT
13 Tribe's members deprivation and then released that
14 information to those members who requested it, Mr. Stein
15 acted to stop diversion of casino project funds under the
16 Libra agreement to non casino purposes. So even -- even
17 milliliters recognizes that there was something other than
18 nominal happening here and the issue has come up also in
19 his testimony by the way, that -- as to whether the
20 subsequent -- even if the first agreement is void, can you
21 cause it to come to life by a later resolution. And I was
22 not sure of the answer to that because of the way it was
23 put. It was -- it was kind of meta physical, if something
24 is non existent can you make it existent later. That's not
25 the way I see it. The see it that the original agreement
26 was void because of all the reasons that I've said exam
27 then when there was an attempt to create life again, all
28 the same problems existed so that it was void at that point

1 too. So so in essence I see Mr. Mills' stated opinion as
2 essentially a closing argument putting into the mouth of an
3 expert. A closing argument I any on almost all the issues
4 even beyond what he was presented as an expert for. I'm
5 done.

6 MS. IBARRA: Okay I have nothing further with this
7 witness.

8 THE COURT: Okay okay we'll let cross-examination
9 begin I guess tomorrow.

10 MR. STEIN: And Your Honor again we would like to
11 copy the notes that he's been reading from in his testimony
12 and we want a mistrial if we can't copy the notes, leading
13 his testimony and we'd like the motion to be heard now.

14 THE COURT: Do you have authority on that. Let me
15 ask I did give it to them before why shouldn't I give it to
16 them again, I gave them the notes -- although they seem to
17 have been -- the prior notes seem to have been prepared
18 test he wrote his original opinions, this is just sort of
19 rebuttal which had you wouldn't have known about it until
20 you heard Mills testimony but nevertheless I gave it to
21 them before why shouldn't I give it to them again.

22 MS. IBARRA: Mills rebuttal was last week.

23 THE COURT: I understand why shouldn't I give it
24 to him mind you you didn't notes from Mills but you didn't
25 ask for them.

26 MS. IBARRA: Yeah I didn't get any.

27 THE COURT: You didn't ask for.

28 MR. STEIN: Mr. Mills had the report.

1 THE COURT: I understand.

2 MS. IBARRA: I don't think that Mr. Margolis -- I
3 mean Mr. Margolis just prepared this, there was no reason
4 why there was an opportunity to give it to them any sooner
5 today as testimony.

6 THE COURT: Well you did -- Mr. Margolis looked at
7 these typed opinions so there was at least some ability to
8 read it and prepare, whereas here Mr. Margolis doesn't have
9 a report concerning his rebuttal. It's sort of the nature
10 of rebuttal but.

11 MR. STEIN: Again Your Honor it's any with witness
12 whether an expert or not reading from prepared notes while
13 testifying, the council are supposed to --.

14 THE COURT: Well did you refer to notes, you have
15 did refer to notes.

16 MR. STEIN: We want those notes in evidence.

17 THE COURT: No, they're not.

18 MR. STEIN: 20 make a record of what eves reading
19 from.

20 THE COURT: That's denied but if you want to
21 shall.

22 THE COURT: The last notes were put into evidence.

23 MS. IBARRA: Is there a citation.

24 THE COURT: Were the last notes put into evidence
25 or were they simply provided.

26 MR. STEIN: No they were put in evidences.

27 MR. FORDYCE: Who's notes are they talking about.

28 THE COURT: No I'm asking you Mr. Stein, what is

1 the evidence number, what the exhibit number.

2 MR. STEIN: The exhibit number, let's find it.

3 THE COURT: That's right, you find it. You tell
4 me what it is.

5 MR. STEIN: Thank you let me find that, let me
6 find that exact point. If I could have just a moment or
7 two.

8 MS. IBARRA: They were provided, but they were
9 never referenced in the cross-examine of Mr. Margolis.

10 MR. STEIN: They were -- my --.

11 THE COURT: While you're doing that --

12 MR. STEIN: Thank you.

13 THE COURT: -- let's find out, I allowed Mr.
14 Stein -- to have those so he could prepare because your
15 expert didn't have a written report, Mr. Mills came in with
16 a written report so your expert had the benefit of a
17 written report. Mr. Stein doesn't have that benefit so why
18 shouldn't I allow him to have the notes, which have been
19 referenced by the witness, not read from but he's looking
20 at them, he's referring to them to help him testify so why
21 shouldn't I give it to him, he doesn't have a report.

22 MR. STEIN: 15 41 Your Honor is one exhibit.

23 THE COURT: Okay let's look at 15 41, Neli.

24 THE CLERK: Margolis C.V..

25 THE COURT: Margolis C.V. it is not notes.

26 THE CLERK: 15 41 is a copy of SMDC K Resolution
27 46.

28 THE COURT: Keep looking. In the meantime tell me

1 why, seems to me since he doesn't have the benefit of a
2 report.

3 MS. IBARRA: Well there's also the benefit of the
4 written record and the testimony which is most reliable, he
5 also read the citations of all the cases [AOE] relying on
6 into the record so I don't know why that's not just as good
7 as anything that he may be referring to in his notes that
8 he's not actually stating for the record when he -- when
9 he's -- when he's eliciting his testimony. That's the
10 record of what his testimony is, not his notations on Mr.
11 Mills' reports and side [TPHO*EZ] notes on it. I mean if
12 there is citation to the law and the law is established on
13 this basis --.

14 THE COURT: 15 40 is his professional background
15 it doesn't have any notes at all.

16 MS. IBARRA: And if there's a rule of law.

17 THE COURT: No handwritten.

18 MS. IBARRA: Citation or case law that says that
19 he must -- you know that an expert must provide his notes
20 when he's referring to them then make I'm wrong but I don't
21 think there is such a thing and I haven't heard that from
22 counsel.

23 MR. FORDYCE: I'm looking.

24 MS. IBARRA: I have mean they knew that he wasn't
25 going to come in with a prepared report, I've stated it
26 numerous times that we didn't ask him to prepare a report
27 so --.

28 THE COURT: So what exhibit number are you

1 referring to, did you find it.

2 THE CLERK: Yeah he's saying 15 41 it looks like
3 it's their handwritten notes but I don't remember.

4 THE COURT: Who's saying.

5 THE CLERK: Mr. Stein.

6 THE COURT: And what do you have for that.

7 THE CLERK: 15 41 it's copy of SMDC K and
8 Resolution 46 July 20.

9 THE COURT: What I would suggest you do is talk to
10 the court reporter if she has a reference to the transcript
11 where there's some mistake we can deal with that. But that
12 aside.

13 MR. STEIN: Again Your Honor, I'm just surprised
14 the court has not run into this situation before where any
15 witness is reading some something from the stand and that
16 has to be shown to opposing counsel and can also be made as
17 an exhibit. From what I can see, I trust Neli's records
18 more than my own, I may have put 15 41 with the intention
19 of asking for it to be admitted so it -- and I do show that
20 I was provided with all the documents in 12 separate
21 e-mails that Ms. Ibarra tend me.

22 THE COURT: Well I have know we provided the notes
23 to you, I don't think they were made an exhibit but we did
24 first -- when we first called Mr. Margolis we did provide
25 you with those notes, I'm not disputing that, I recall
26 that.

27 MR. STEIN: And to the court's benefit, to confirm
28 what the Court's understanding is it would make accepts

1 that I was provided with the court's, set aside notes I
2 wanted to make an exhibit, gave it a number but rather than
3 introducing it, I have not introduced it, so -- that would
4 jive with Neli's records and jive with.

5 THE COURT: Well, Neli's records don't reflect
6 that.

7 MR. STEIN: That it was not an exhibit.

8 THE CLERK: Correct, Your Honor.

9 MR. STEIN: The Court's point that it's not an
10 exhibit is what I'm saying.

11 THE COURT: Yes.

12 MR. STEIN: My memory now supports what the court
13 is saying my memory now supports what Neli is saying is the
14 state of the record, however we were provided with it and
15 it seems to me that any witness on the stand in any trial
16 that reads from notes, those notes can -- should be given
17 to opposing counsel and opposing counsel can then seek to
18 entered them into evidence.

19 THE COURT: Well he was referring to them, he was
20 referring to his notes, is there any reason why I shouldn't
21 give it to him? Your witness doesn't even have a report.

22 MS. IBARRA: Mr. Margolis -- can I speak to Mr.
23 Margolis about it.

24 THE COURT: Well let's put it this way, you need
25 to go back and make a Xerox copy and I'll make a
26 determination of whether it should be turned over so I want
27 you to make a Xerox copy of his notes and I'll make a
28 determination of whether it should be turned oaf.

1 MR. STEIN: And how does the court want to handle
2 the timing because once I have the notes that I would like
3 to share them with my expert what he has to say and then
4 use that for my cross-examination.

5 THE COURT: I have no idea. I don't know how you
6 want to prepare.

7 MR. STEIN: I would like to cross-examine him on
8 Monday.

9 THE COURT: Well tomorrow is cross-examination so
10 bring the notes tomorrow. All right.

11 MR. STEIN: But Your Honor may I have a Xerox copy
12 of them tonight by e-mail similar to how far the other
13 documents are presented it seems like we're open to
14 gamesmanship where he never get the chance for the notes
15 and again I will be bringing a motion for mistrial and
16 bringing this exact point.

17 THE COURT: Well there's no motion for mistrial,
18 you need to bring a motion for mistrial.

19 MR. STEIN: Which we will.

20 THE COURT: The copy -- when do you think you can
21 have the copy Ms. Ibarra.

22 MS. IBARRA: Oh when can I make the copy.

23 THE COURT: You need to have review them, make the
24 copy.

25 MS. IBARRA: I need to have review hem and I have
26 need to see there's isn't anything in there that might be
27 protected somehow, I can't imagine but I have to do that
28 before I turn it over.

1 THE COURT: I understand.

2 MR. STEIN: Why can't she do that right now and
3 have copies over to my office at two MRI.

4 MS. IBARRA: I will see.

5 THE COURT: Because it's 12 right now. Why don't
6 you have them by the end of the day.

7 MS. IBARRA: Yes, I will be able to review and
8 have them by then.

9 THE COURT: How far about by Five, can you do it
10 by Five.

11 MS. IBARRA: Yes, I can.

12 THE COURT: Okay by Five.

13 MR. STEIN: Thank you Your Honor.

14 THE COURT: So you can have them reviewed and
15 produced by Five.

16 MS. IBARRA: Yes, reviewed and produced.

17 THE COURT: All right. Thank you so we'll receive
18 you tomorrow 10:00 o'clock tomorrow.

19 MR. FORDYCE: Thank you Your Honor.

20 MR. STEIN: And Your Honor in light of this, I'd
21 like a full two hours not one hour.

22 THE COURT: No you have get an hour.

23 MR. STEIN: Thank you Your Honor.

24 THE COURT: And she didn't get two hours, she had
25 substantially less than two hours given the objections
26 given that we started at 10 20 she didn't get the two full
27 hours she was allocated so -- nonetheless you will get your
28 full hour.

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MR. STEIN: Thanks Your Honor. 12:11 PM.