

1 CAUTIONS IN USING A REALTIME PARTIALLY EDITED TRANSCRIPT

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

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

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

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1 GABRIELINO-TONGVA TRIBE VS. STEIN, DAY 54

2 ROUGH TRIAL TESTIMONY OF ARTHUR MARGOLIS

3 10:07 AM.

4 THE COURT: Gabrielino versus Stein, BC361307.

5 Good morning counsel, make your appearances.

6 MS. IBARRA: good morning Delia Ibarra on behalf
7 of plaintiff, Gabrielino-Tongva Tribe.

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

11 MR. STEIN: Good morning Your Honor Jonathan Stein
12 on behalf of SMDC and the Crane Group.

13 THE COURT: Okay, did you get your notes Mr.
14 Stein.

15 MR. STEIN: Yes, I did, thank you very much for
16 asking.

17 THE COURT: All right let's bring Mr. Margolis in.
18 Are you ready?

19 A. No I'm looking for my -- yes now I'm ready.

20 THE COURT: Okay you understand you're still under
21 oath?

22 A. Yes.

23 THE COURT: Cross-examination.

24 MR. STEIN: Thank you Your Honor?

25 A. Oh excuse me one second. Okay.

26 Q. BY MR. STEIN: Mr. Margolis I've written a number
27 of points on the board I'd like to make it clear on the
28 record this is not your testimony, these are things I've

1 written on the board but I'll use that list to guide
2 cross-examination to try to finish within one hour from 10
3 '09, is that okay with you Mr. Margolis?

4 A. Yes.

5 Q. Okay. The first example I've written on the board
6 says soccer mom, no agreement necessary, just give and
7 accept legal advice and let me explain that and ask you to
8 assume something. Which heard Mr. Mills earlier and you
9 responded to it yesterday talk about an example where a
10 soccer mom approaches Mr. Mills or another lawyer at a
11 soccer game and says gee I've got a legal problem a tenant
12 and I want to ask you about it but Mr. Mills being the
13 cautious lawyer says wait I want you to understand we don't
14 have an attorney-client relationship and the soccer mom
15 says that's fine with me, I didn't want to create an
16 attorney-client relationship I actually have my own lawyer
17 but I'm kind of curious about this right now, Mr. Mills
18 [ABG] we [EPBS] [-Z], she asks a question on the tenant
19 problem, he gives a legal answer on the [T*EPBS] problem, .
20 Is it I didn't remember testimony that that is enough to
21 have create an attorney-client relationship?

22 A. Yes they didn't call it but it is an
23 attorney-client relationship.

24 Q. And this is beyond confidentiality [-S] this the
25 the purpose for applying all the [*EGS] rules?

26 A. Yes and malpractice so she would be in a position
27 to [SAO*] sue him in if the advice was not good.

28 Q. And I'd like to refer you to his opinion where

1 you -- there's a --.

2 THE COURT: You're referring to Mr. Mills right.

3 MR. STEIN: Mr. Mills' before, yeah on Page 2 of
4 his written opinion which is Exhibit 155 three?

5 A. Okay just a minute.

6 Q. We had a long quote and I think you and I
7 discussed that earlier.

8 THE COURT: What page.

9 MR. STEIN: Page 2 of 13.

10 THE COURT: Of tab one right.

11 MR. STEIN: Tab one, yes Your Honor thank you.

12 Q. BY MR. STEIN: And while you're reading, let me
13 read it, except for those situations where an attorney a-
14 appointed by court the attorney-client relationship is
15 created by some form of contract, express or implied,
16 formal or informal an implied contract is one which the
17 existence of terms are manifest by conduct. The
18 distinction between express and implied-in-fact contracts
19 relates only to the manifestation of tense, both types are
20 based upon the express or apparent intention of the
21 parties, do you read that?

22 A. I heard it.

23 Q. Do you still agree with that that that's
24 California law?

25 A. It's California law.

26 Q. So how could you square the fact that no agreement
27 is necessary, all you have to do is give and accept legal
28 advice under the soccer mom example?

1 A. Because you're assuming that I have you have to
2 call it attorney-client -- an attorney-client relationship
3 in order for it to be an attorney-client relationship but
4 that even if everyone accounts with all elements of an
5 attorney-client relationship that is the request for
6 advice, the give gig of advice, the acceptance of the
7 advice, if you have that, when you say you aren't my
8 attorney or you are, whatever, it's still attorney-client.
9 It's the practice of law and it's the -- it creates an
10 attorney-client relationship. I think that you're making
11 an artificial distinction by saying if you don't call it
12 attorney-client then it's not attorney-client even if you
13 act like an attorney-client. For instance, if she says I
14 don't want you to be my attorney and he says I'm not your
15 attorney.

16 Q. Can I limit your answers, I only have an hour and
17 it [SHOUPBDZ] like you've given a complete answer so I'd
18 like to limit it at this point and ask you another
19 question?

20 A. I would like to finish my answer.

21 Q. You did finish your answer.

22 THE COURT: All right did you finish your answer?

23 A. No I'm just about to finish my answer.

24 THE COURT: All right?

25 A. So if she says I don't want you have to be my
26 attorney, he said I don't want to be your attorney and she
27 says would you help me on your situation.

28 MR. STEIN: Again motion to strike that is not I

1 example he's changing my example for his purpose.

2 THE COURT: Well maybe it is but that's part of I
3 answer to motion is denied?

4 A. So even if they have the conversation where he
5 says he's not going to be the attorney and then he goes
6 into court for her isn't that attorney-client.

7 Q. Again this is not my hypothetical, I'd like to
8 trying this as nonresponsive?

9 A. It's my hypothetical for the purpose of explaining
10 your answer.

11 Q. No you already gave an answer, you're changing it
12 and you're giving new information that is not responsive to
13 any question, I have stated a hypothetical you're.

14 MS. IBARRA: Objection.

15 MR. STEIN: You're changing the hypothetical.

16 MS. IBARRA: Counsel is arguing with the witness.

17 THE COURT: He is but he's only got an hour so if
18 he wants to argue with the witness then he's using up his
19 time so I'm going to allow the witness to answer but
20 remember you're not asking the questions so I got the sense
21 you were trying to ask counsel a question, so if you have
22 don't [UPBTS] it, then ask a question.

23 A. Oh you were talking to me.

24 THE COURT: Yes so?

25 A. All right.

26 THE COURT: Go ahead and finish your?

27 A. I'm done --.

28 THE COURT: You were talking about the soccer --

1 they both agree h I'm not your attorney, yes Europe the
2 representation but yet he goes into court and represents
3 her then does that.

4 A. Yes the same as if I don't want you to be doctor
5 the doctor says I don't want to be your doctor and then he
6 operates object her.

7 THE COURT: Is he a doctor?

8 A. Right.

9 THE COURT: But for attorneys, what is the answer?

10 A. The answer is the same there's an attorney-client
11 relationship.

12 Q. BY MR. STEIN: So you agree that this is the
13 California law yet you're saying that something that
14 appears to me entirely inconsistent, it sounds line you're
15 making up?

16 A. Well I appreciate your comment.

17 Q. Okay. Then let's go to Exhibit 30 please, Niall
18 can you pull up exhibit 30 for me, exhibit 30 in the blue
19 notebook?

20 A. I can't find exhibit --.

21 Q. It's volume one of the blue notebook.

22 THE COURT: It's in there. You can put it there?

23 A. Thank you. This one starts at '62.

24 THE COURT: It's up above, the second volume.

25 Well leave that there because you might need it?

26 A. Okay. Just a minute. Okay.

27 THE COURT: You're looking at 31. We're talking
28 about 30?

1 A. I'm sorry 32.

2 THE COURT: No 30.

3 MS. IBARRA: 30.

4 A. 30.

5 THE COURT: There you are.

6 Q. BY MR. STEIN: Mr. Margolis you testified -- is it
7 your recollection that you testified earlier that this 20
8 [redacted] 2005 letter with the law offices of Jonathan Stein at
9 the bottom created an attorney-client relationship?

10 A. I don't say it created an attorney-client
11 relationship, it is part of an attorney-client
12 relationship, the relationship started before but yes this
13 is the practice of law, you're representing a client on a
14 legal matter and you're doing it as an attorney, the law
15 offices of Jonathan Stein.

16 Q. I'll ask you to assume that there was testimony in
17 this case which there was that this was just a did you mean
18 mistake, that Mr. Stein intended to put the exhibit 32
19 ending and we'll get to Exhibit 32 in a second, but
20 intended to sign it Saint Monica development and simply got
21 it wrong and put law offices of the Jonathan Stein, you're
22 saying is that enough to create an attorney-client
23 relationship?

24 A. I would have to know more about how the tribe
25 looked upon your efforts here. If they saw you as their
26 attorney and they saw the efforts you were making here as
27 being attorney activity, legal activity, then the letter
28 itself would not be enough I suppose if it was just a

1 mistake but it would be part of an attorney-client
2 relationship.

3 Q. Well your testimony earlier?

4 A. Also.

5 Q. Was that it was enough and now that you understand
6 it was just a dumb mistake, maybe it's not enough?

7 A. No, I'm not saying it wasn't enough, it -- no
8 that's not what I'm saying.

9 Q. Tell us what you're saying?

10 A. I'm saying if it was just an error and the context
11 was that the tribe did not see you as someone offering
12 legal services or accepting legal services for you and if
13 the tribe were to look at that and say oh no this is a
14 mistake too, then I suppose you could say that by itself
15 out of the context that I have understood that this took
16 place that it didn't create an attorney-client
17 relationship, however, if the tribe was looking to you as
18 their attorney and this letter was presented as offering
19 legal services, rather presenting legal services then it
20 would be consistent with what the tribe was anticipating.

21 Q. And you note the date is the 2005, so?

22 A. Yes.

23 Q. This letter did create a rip it would only be
24 2005, would that be correct?

25 A. If --.

26 Q. Looking at just this letter?

27 A. Taking away the whole context and all we're
28 looking at is this and I'm to ignore everything else, this

1 would be evidence of an attorney-client relationship on
2 that date that's right.

3 Q. And that would be after the Resolution 46 when --.

4 THE COURT: Wait a minute are we excluding all of
5 that now.

6 MR. STEIN: That's the a- [SAOUPPTS].

7 THE COURT: Because I just --.

8 MR. STEIN: That's at [SAOUPPTS] yes.

9 THE COURT: So far now he's adding another
10 assumption to the hypothetical.

11 MR. STEIN: Yes.

12 THE COURT: Okay I understand now if you add in
13 resolution 36.

14 MR. STEIN: Resolution 46 was September of 2003 so
15 would that be affected if this is the only evidence of an
16 attorney-client relationship?

17 A. I don't understand the question. I'd have to --
18 hang on a second. I don't understand the question. How it
19 would be affected and I have to look and see what 46 -- 46;
20 just a minute.

21 Q. That was the 2003 resolution that you spoke at for
22 20 minutes yesterday?

23 A. It was September 28, 2003, yeah. Just a minute.

24 Q. So --?

25 A. Well let me finish reading. Okay so what is it
26 now that you're asking?

27 Q. If you take away the other evidence and the court
28 symptoms this evidence as the only evidence of an

1 attorney-client relationship, you're sake that that would
2 be formed in 2005 when the letter is written?

3 A. Yes.

4 Q. Would that leave in place Resolution 46 from 2003
5 as Mr. Mills opined?

6 A. When you say would it leave in place.

7 Q. Right.

8 A. That would not affect Resolution 46.

9 Q. It would not affect Resolution 46?

10 A. It doesn't evaporate it so to the extent I
11 understand the question as Resolution 46 exists although I
12 think it's void and as to the effect that the March 25th,
13 2005 letter has on it, they're both independent. That's
14 the best I can do with the question to the extent I can
15 understand it.

16 Q. So if the court doesn't accept that Resolution 46
17 is void?

18 A. Yeah.

19 Q. And the court finds that [R*ED] H* Resolution 46
20 [SROELD] a valid binding and effective agreement in 2003
21 where \$725,000 was owed?

22 A. Uh-huh.

23 Q. If that's the case then a later attorney-client
24 relationship in 2005 formed by exhibit 30 would not impact
25 that, is that your testimony?

26 A. Okay. Okay so you're saying -- you're asking me
27 whether if in September of 2003 there was not an
28 attorney-client relationship, the fact that there was this

1 letter March 25th, 2005 would that cause there to be an
2 attorney-client relationship in September of 2003 and the
3 answer is no.

4 Q. The answer is no.

5 THE COURT: If you're just looking at those two
6 things, right?

7 A. That's right.

8 THE COURT: And with those assumptions?

9 A. With those assumptions.

10 Q. BY MR. STEIN: So let's go to Resolution 46?

11 A. Wait, is it okay if I put this away.

12 Q. Amendment.

13 THE COURT: No no just leave it there because I
14 think.

15 MR. STEIN: Exhibit 15 49?

16 A. 1549.

17 MR. STEIN: Uh-huh.

18 THE COURT: Are you in the Blue Book again.

19 MR. STEIN: No it's Resolution 46 is a defense
20 exhibit it's in the white book it would be under 569 in the
21 white book.

22 THE COURT: Put that one here. Mr. Stein to make
23 this move faster you might want to get the book for him.

24 MR. STEIN: [KWR*EU] want that to be seen as
25 causing a stir.

26 THE COURT: No that way you can move quickly.

27 MR. STEIN: That's what I was hoping but I didn't
28 want to cause a stir?

1 A. Thank you.

2 THE COURT: Remind me Mr. Stein what the number
3 is?

4 A. It is -- it's.

5 THE COURT: I heard six something but.

6 MR. STEIN: It's 569 is the original number and
7 then Resolution 46 has been renumbered as Exhibit 15 46.

8 MR. FORDYCE: 1546? .

9 MR. STEIN: I'm sorry 1548. I'm sorry it's 15 --
10 yeah 1548?

11 A. So I'm looking at 46.

12 Q. Yes and then I will ask you to look at the
13 amendment which it passes?

14 A. Okay just a minute okay.

15 Q. That's 1549 but it's also an exhibit to that.

16 THE COURT: Okay so Mr. Stein maybe -- you want to
17 place three documents in front of him now, is that what
18 you're trying to do.

19 MR. STEIN: No no we're finished with the others
20 for now, we're just placing one document in front of him
21 which is Resolution 46 Exhibit A is the amendment terms.

22 THE COURT: What exhibit number is it.

23 MR. STEIN: It's 15 -- it used to be exhibit 569,
24 it is now.

25 THE COURT: Right.

26 MR. STEIN: 1548 or 1549 depending on whether you
27 have our updated documents.

28 THE COURT: 1548 or 49 I guess.

1 MR. STEIN: Yes, yes and again we've handed in
2 what the court requested but I'm not sure what we've had a
3 chance to process it yet.

4 THE CLERK: Is that what you gave -- is this the
5 stack.

6 MR. FORDYCE: Yeah.

7 MR. STEIN: Yes.

8 THE CLERK: This is the stack I think Her Honor
9 that Ms. Ibarra has an issue with.

10 THE COURT: So that has [-BTS] been introduce
11 [STPHAOD] [TPHOP] that hasn't been identified.

12 MR. FORDYCE: My understanding is she had an issue
13 with one part of this and it is not what we're dealing with
14 here.

15 MS. IBARRA: Yes.

16 THE COURT: Well what are you showing him.

17 MR. STEIN: I'm showing him what used to be
18 exhibit 569, Resolution 46 and the contract that it passed
19 is Exhibit 15 49 and we'll be referring to the contract
20 that had passed.

21 THE COURT: Has this been introduced into evidence
22 before.

23 MR. STEIN: Oh my goodness yes Your Honor.

24 MS. IBARRA: Yes Resolution 46 we've talked about
25 a lot.

26 THE COURT: Resolution 46, okay.

27 MR. STEIN: Resolution he opined at length on,
28 this is the Rae Lamothe resolution.

1 MS. IBARRA: Yeah.

2 MR. STEIN: 2003 and it passed an amendment and
3 modification agreement written by Rae Lamothe.

4 THE COURT: Oh yeah the modification.

5 MR. STEIN: And that's the agreement that we're
6 looking at Section 6 and seven.

7 THE COURT: Well I don't have it but you can go
8 on. Do you have that in front of you Ms. Ibarra.

9 MS. IBARRA: Yeah we do have it yeah. We could
10 probably [PHAEBG] a quick copy if you need it.

11 THE COURT: No no just follow along, you want to
12 point him to a spot.

13 MR. STEIN: I want to point the court too I will
14 way for the Court.

15 THE COURT: No no you can go on.

16 MR. STEIN: I will wait for the Court Your Honor.

17 THE COURT: I don't want to hold you up.

18 MR. STEIN: I have know that. What I'm trying to
19 do -- well I'll wait.

20 THE COURT: I remember the modification.

21 MR. STEIN: Yeah but we'll be reading from it and
22 want the court to follow along.

23 MS. IBARRA: Shall we make a copy? .

24 THE COURT: I have know it's been referred to over
25 and over again.

26 MR. STEIN: [KWOU] like me Then In 2000 begin Your
27 Honor.

28 THE COURT: Yes.

1 Q. BY MR. STEIN: Mr. Margolis, Section 6 and Section
2 7 of the agreement, you made very specific statements
3 about -- to the court about what it said that was the
4 opposite of what it actually said, I objected at the at the
5 time the court said bring it up on cross-examination, that
6 is what we're doing now, can you read Section 7 please?

7 A. Of which document.

8 Q. Section 7, there is only one section of the seven
9 of the document I have pointed out.

10 MS. IBARRA: Can you give me a Page Number.

11 MR. STEIN: Of the amendment and modification that
12 was passed by Resolution 46.

13 MS. IBARRA: Can you give him a Page Number.

14 MR. STEIN: And it is Page 5 26, Bates stamped
15 Five 26 at the bottom, can you read Section 7 please?

16 A. [SKWROZ] Five 26.

17 Q. You seem to want to avoid what we did, 56 [# *]
18 Five 26 is right there.

19 MS. IBARRA: Objection.

20 MR. STEIN: Section 7 is right there?

21 A. I see it.

22 THE COURT: There's an objection.

23 MS. IBARRA: Again counsel is arguing.

24 THE COURT: Yeah argumentative counsel, refrain
25 from the comments, the comment is stricken stricken?

26 A. Okay let's see, that's Number 7, let me read it,
27 right okay.

28 MR. STEIN: Can you read it allowed please?

1 A. Yeah the tribal council on behalf of tribe has
2 reviewed the agreement as amended and hereby approve and
3 ratify the agreement as amended, the tribal council on
4 behalf of tribe agrees that the developers performed all
5 the terms and conditions of the agreement through the date
6 of the 2003 amendment.

7 Q. Now you very specifically testified [KWREFD] that
8 this provision said the opposite of what it appears to say.
9 Why did you testify in that manner?

10 A. I don't understand what you think I said so I
11 can't -- I can't respond to it.

12 Q. You don't recall.

13 MS. IBARRA: Objection misstates testimony.

14 THE COURT: Well.

15 MR. STEIN: You have don't recall your
16 testimony --.

17 THE COURT: Hold on, sustained on vagueness.

18 MS. IBARRA: And vagueness.

19 Q. BY MR. STEIN: Do you recall that yesterday you
20 testified that the amendment and modification did not bring
21 up to date, did not bring up to 2003 the approval and
22 ratification of the terms and conditions of SMDC agreement?

23 A. All right of the let me read it again. Yes okay I
24 have it, yeah.

25 Q. So why did you testify that way? Why did you
26 inform the court it says the opposite of what the plain
27 language says?

28 A. Because this refers to a confirmation or statement

1 that the attorney performed all of the things he was
2 supposed to do, it does not say that the attorney did not
3 do what he wasn't supposed to do. It doesn't address the
4 question of whether he was acting as an attorney just
5 whether he had performed all of the duties he was
6 positively required to do, so if you were required to take
7 part in negotiation or draft documents or pursue certain
8 projects, they're saying that that's what you did and
9 they're happy with your services, it does not say that you
10 did not act as an attorney during that time.

11 Q. That was not your testimony yesterday. Your
12 testimony yesterday was that this did not update the
13 agreement.

14 THE COURT: Mr. Stein do you have a question
15 because statements by counsel.

16 MR. STEIN: Yes.

17 THE COURT: Are not evidence so your statement is
18 stricken.

19 MR. STEIN: Very good.

20 THE COURT: So refrain from statements, if you
21 can't refrain from statements I'm going to have to curtail.

22 MR. STEIN: Very good point.

23 THE COURT: Your questioning so.

24 MR. STEIN: Yes, I understand Your Honor?

25 A. It did not update the agreement as to whether you
26 were an attorney or whether you had a fiduciary
27 relationship.

28 Q. BY MR. STEIN: This agreement provides that there

1 is no fiduciary duty. How can it not update a fiduciary
2 duty? This agreement specifically provides that there's no
3 fire department. Do you recall that?

4 A. You mean the original agreement?

5 Q. As ratified and as as adopted again in 2003 t says
6 no fiduciary duty in 2003?

7 A. Yes. Well no, it says that as of the original
8 agreement you did not have a fiduciary duty and that the
9 agreement would not create an attorney-client relationship
10 or a fiduciary duty but this does not update it in the
11 sense that it changes that. It doesn't say that during
12 this time all the way up to the present you had -- you have
13 not had a fiduciary relationship or that up to this time
14 you were [-RPB] the attorney.

15 Q. So you don't think that when GT Tribe, the
16 organization, takes an official action to adopt this
17 agreement and the agreement says the tribal council on
18 behalf of the tribe has reviewed the agreement as amend-d
19 and hereby approve and ratify the agreement as amended, you
20 don't think that that acknowledges that there is no
21 fiduciary duty as of 2003?

22 A. Would you repeat the last part.

23 MS. IBARRA: Counsel it's vague.

24 THE COURT: He's --.

25 Q. BY MR. STEIN: As of 2003, that there's no
26 fiduciary duty that they adopted as amended?

27 A. Oh I see. No I don't think that that means as of
28 then there was no -- as of the time of this new document

1 that there was no attorney-client relationship or fiduciary
2 relationship and it certainly says nothing about what
3 happened outside of the agreement.

4 Q. In Paragraph 6, you testified that the tribal
5 council Rae Lamothe did not draft the amendment r did not
6 draft any of the resolutions, Mr. Stein did and that was
7 the basis of your opinion [WA*US] was that Mr. Stein
8 drafted all the resolutions?

9 A. It was the basis of what opinion?

10 Q. All all of your opinions, you stated the basis of
11 your opinions was Mr. Stein drafted all the resolutions?

12 A. No, it's not the base I was of all my opinions, I
13 did say that I understood that you were actively involved
14 in drafting it, I heard that you -- and I was assuming that
15 was true, that you actually drafted them or were actively
16 involved in it. No, that does not determine all of my
17 opinions.

18 Q. And in Section 6 it says in addition tribal
19 general counsel has drafted this 2003 amendment and now
20 that it's valid, binding, and enforceable obligation of the
21 tribal council?

22 A. I'm sorry where are you look [STKPWHR-G] in
23 Section 6 in the middle it says in addition tribal general
24 counsel has drafted the 2003 amendment and found that it's
25 a valid, binding, and enforceable obligation?

26 A. Okay.

27 Q. So you think that the organization can agree to
28 that and agree to a document that says no fiduciary duty

1 but Mr. Stein would still have fiduciary duties?

2 A. Well first of all, the threshold issue [SEU] think
3 that this document is void because it's in violation of
4 3-300.

5 Q. Why is it in violation of 3-300?

6 A. Because it doesn't advise to get independent
7 counsel, it says that you have independent counsel which
8 was not true and also it gives -- hold on stop, stop,
9 you're saying this it was not true that Rae Lamothe was not
10 independent counsel?

11 A. No. What? She was not independent counsel but
12 this is referred -- she's referred to as if they have
13 independent counsel.

14 Q. And you're basing that assumption on what, that
15 she's not independent, when they're signing an agreement
16 saying they had independent counsel and Rae Lamothe was it,
17 the organization, not an individual, we're talking about an
18 organization taking an official action, you're saying that
19 they -- you have found that in fact that that was not true
20 and that they were lying in this agreement, and they don't
21 need to be bound by this agreement?

22 A. Can I answer?

23 Q. Please.

24 A. One, she was not independent because you dominated
25 what she did and directed it, that's number one. And then
26 Number 2, her fee agreement, her compensation agreement
27 caused her as we've already discussed at some length as not
28 being independent and also -- so there isn't any advice

1 here to get independent counsel because they're begin the
2 impression that they have independent counsel and also
3 there's no disclosure here that there's a conflict.

4 Q. So you're saying that this -- if this court finds
5 that Rae Lamothe in fact was independent counsel does that
6 change your [P-RPB]?

7 A. No because you would still have to disclose that
8 there was a conflict?

9 A. I see. Now you're saying that Rae Lamothe was not
10 independent counsel, I'd like to refer to Exhibit 25 Five
11 provided by Plaintiff's.

12 A. So can I close this up.

13 Q. No no please leave it there?

14 A. Okay so now.

15 Q. And I'll just read the section --.

16 THE COURT: It's a Plaintiff's Exhibit.

17 MR. STEIN: Yes.

18 THE COURT: And what is the exhibit number again?

19 A. It's exhibit 255, Page 14.

20 MS. IBARRA: It's a loose one.

21 MR. STEIN: Mr. Margolis we don't need you to do
22 it, I'm just going to read that to you.

23 THE COURT: Well we all need to look at it Mr.
24 Stein, exhibit 255, if you have a copy, do you know where
25 it is in this stack?

26 A. Are you asking me.

27 THE COURT: No I'm asking Mr. Stein. This is it,
28 a pleading here.

1 MR. STEIN: Yes, it is.

2 MR. FORDYCE: I've got an extra copy.

3 MR. STEIN: Can you bring an extra copy for the
4 witness please.

5 MR. FORDYCE: It's a reply brief.

6 THE COURT: That's the Court's copy. Mr. Margolis
7 go ahead and have a seat.

8 Q. BY MR. STEIN: And again your reason that you say
9 Rae Lamothe was dominated and controlled by Mr. Stein was
10 had not because you read her testimony, it's because Ms.
11 Ibarra told you correct?

12 A. Ms. Ibarra told me and you know based upon the
13 documents that I read.

14 Q. The document -- which document that you read?

15 A. I don't --.

16 Q. Said that Rae Lamothe was controlled by Mr. Stein?

17 A. I believe I saw that in the motion for summary
18 adjudication or for judgment however I'm assuming that to
19 be true because I was also told that.

20 Q. So if the court finds that it's not true and she
21 is independent counsel then is that the end of your
22 opinion?

23 A. No, no. Because there's still.

24 MS. IBARRA: Asked and answered?

25 A. No disclosure that there's a conflict.

26 MR. STEIN: Let's look at rule 3-300.

27 THE COURT: So you don't need that exhibit.

28 MR. STEIN: We will come back to it Your Honor?

1 A. Oh my God.

2 THE COURT: So you don't need that.

3 MR. STEIN: And can you please caution the witness
4 not to react as if I'm an idiot. Again, this is the same
5 point as yesterday.

6 THE COURT: Mr. Stein please.

7 MR. STEIN: I am doing my best, Your Honor. I ask
8 you the same as him, for him to say oh, my god, like I'm an
9 idiot.

10 A. No, nothing to do with you. It had to do with all
11 the papers in front of me. I'm trying to juggle them. It
12 has nothing to do with you.

13 Q. BY MR. STEIN: Mr. Mills' opinion, Page 4?

14 A. Okay I have to move some things, just a minute.

15 THE COURT: Which is the black binder.

16 Q. BY MR. STEIN: Page 4 of Mr. Mills' opinion, the
17 second opinion rule 3-300?

18 A. Okay wait a minute. Page 4.

19 Q. Uh-huh.

20 A. Oh I see, okay just a minute. Okay.

21 Q. And Mr. Mills says that rule 3-300 requires four
22 things and the SMDC agreement complied with four things,
23 you're saying it doesn't is that correct?

24 A. Let me see. I'm not talking about the four
25 things, just a minute.

26 Q. Simple yes or no is enough?

27 A. No simple yes or no may not be enough. Just a
28 minute. I don't agree with his characterization of Item

1 No. 2.

2 Q. Again forgive me.

3 THE COURT: Mr. Stein --?

4 A. With the you asked me whether I agree that you
5 complied with all four of those things, I'm saying I
6 disagree with his interpretation of Number 2, he said it
7 was fully closed in writing, fully disclosed is not just
8 the terms but the fact of a conflict.

9 Q. Thank you H let's go to number one first h rule
10 3-300 had four things, number one was it fair and Mr. Mills
11 says it's fair for GT Tribe got services without current
12 payment and SMDC forwarded all expenses. Do you agree with
13 his opinion that the fairness requirement of rule 3-300 was
14 met if applied to the SMDC agreement?

15 A. That's beyond the scope of my expertise so I don't
16 have an opinion either way or on that.

17 Q. Very good. So you don't have an opinion either
18 way.

19 THE COURT: Well is fairness one of the elements
20 under 3-300. What is the text of 3-300.

21 MR. STEIN: Yes, it is one of the elements, point
22 number one, point number one in the same page.

23 THE COURT: Well I'm talking about the text of
24 3-300, do you have that.

25 A. Yes I do.

26 THE COURT: It's in Mr. Mills opinion?

27 A. Yes, it is.

28 THE COURT: I'm trying to look at what is stated

1 under 3-300 because presumably Mr. Margolis if it's one of
2 the elements and you're testifying as an expert on ethical
3 you would be familiar with that so I'm trying to confirm
4 that first?

5 A. Okay just a minute.

6 THE COURT: What does the fairness mean under
7 those circumstances I guess? Are those rules in the
8 Evidence Code or somewhere else?

9 A. They're right here (Ditto).

10 THE COURT: Okay?

11 A. Here it is (Indicating.).

12 THE COURT: Okay you can read it?

13 A. Oh. Item 3-300 A the transaction or acquisition
14 and its terms are fair and reasonable to the client and are
15 fully disclosed and transfer [PHEUT]-d in writing to the
16 client in a man [THAER] should have reasonably understood
17 with the client.

18 Q. I see [SOZ] [SO*] it's the terms of the
19 transaction that have to be if you feel [AOE] disclosed not
20 a [KHR*EUGT]?

21 A. No it.

22 Q. Can you leave that out please?

23 A. Yeah.

24 Q. I think the court wanted reference to that?

25 A. No that's what the rule says but case law
26 interprets it otherwise as to what fully disclosed means.

27 Q. So you're saying that the rule doesn't mean what
28 this says?

1 A. I'm saying.

2 Q. You're saying that at the transaction or
3 acquisition of its terms are fair and reasonable to the
4 client and are fully disclosed and transmitted in writing
5 to the client Nye manner which should have reasonably been
6 understood by the client, you're saying that fully disclose
7 [H-D] doesn't refer to the terms of the transaction?

8 A. Fully disclose [H-D] refers to the terms of
9 transaction and also the fact of a conflict and also a
10 discussion or a disclosure to the client as to pros and
11 cons that are reasonably foreseeable and that's under Beery
12 versus state bar that's not the only case, it is a well
13 established legal principle that it is not simply that
14 you -- that you disclose the terms of the agreement, you
15 also --.

16 Q. And you think that 35 pages ever single space
17 [-RD] documentation does not fully disclose the terms of
18 the transaction?

19 A. I didn't say that?

20 A. No, it probably discloses the terms of the
21 transaction but not the conflict which is required.

22 Q. And the don't think that anybody with half a brain
23 could understand that Mr. Stein and SMDC.

24 MS. IBARRA: Objection.

25 MR. STEIN: Were adverse.

26 MS. IBARRA: Zero half a brain.

27 THE COURT: Overruled.

28 MS. IBARRA: Move to strike.

1 A. You have to explain to a client, a lay person and
2 alert them to the fact that there is a conflict and you
3 have to warn the client against your -- you have to warn
4 the client against yourself as you would against a third
5 person.

6 Q. And you're saying that this organization, it's an
7 organization, not a person, that this organization were six
8 tribal councilmen and their own attorneys was just too dam
9 stupid to understand that Mr. Stein was adverse when he was
10 grabbing money from them as a vendor and might one day sue
11 them just like they are here?

12 A. I think you're asking is there an exception to the
13 rule because it's a tribe, what you think is sophisticated.
14 No I'm saying that the rule requires that a client be
15 informed and alerted that the attorney has an adverse
16 conflict of interest and you don't should advise them to
17 get independent counsel.

18 Q. And you don't think 35 pages of single spaced
19 documentation plus independent counsel are enough for that
20 client to understand that Mr. Stein was adverse?

21 A. First of all, we're assuming it's independent
22 counsel that's number one, Number 2 you're assuming that
23 lay people understand these things sufficiently with that
24 many pages, that many words in order to understand without
25 doubt that there's a conflict and it doesn't matter whether
26 they would understand it or not and [HAO*ERB] here there
27 isn't any reason to believe that they would understand that
28 there's conflicts or what's that means even or what's

1 required but there's still a requirement that you disclose
2 that there's conflict and explain what the conflict is.

3 Q. Even when there's an organization and 35 pages of
4 disclosures as to what the conflict is that SMDC will be
5 getting money from the tribe and if he doesn't we'll will
6 sue the tribe?

7 A. I've already given my answer.

8 Q. Okay. I'd like to hand this to the court. This
9 is a quote from in in re: Kirsh.

10 MS. IBARRA: Objection.

11 MR. STEIN: You made representations about in re:
12 Kirsh and what it said to the court that I believe are
13 inaccurate. I'd like to go over the exact language of in
14 re: Kirsh.

15 MS. IBARRA: Objection I don't understand what you
16 why we don't have the actual -- if he wants to introduce
17 the case then bring the case but this appears to be Mr.
18 Stein's work product I object to it on that basis.

19 MR. STEIN: This is a direct quote.

20 MS. IBARRA: I don't know what it is.

21 THE COURT: If it's not, the guess the ultimately
22 will ultimately reflect that it's misrepresented. So maybe
23 we can ask Mr. Margolis if he recognizes this as the text
24 of the case. [HREFTS] say a foundation for this. This is
25 a new exhibit right.

26 MS. IBARRA: Yeah.

27 THE COURT: So you need to lay a foundation.

28 MR. STEIN: Thank you. .

1 Q. Have you read in re: Kirsh.

2 THE COURT: Well first what's the number.

3 MR. FORDYCE: Oh gosh what exhibit number are we
4 up to.

5 THE COURT: What number are you giving this one.

6 THE CLERK: 15 56.

7 THE COURT: Okay 15 56. Easiest thing to do would
8 be to print the case.

9 MR. STEIN: This is a partial printer.

10 Q. And do you recognize this language?

11 A. What language.

12 MS. IBARRA: You haven't shown it to the
13 witness.

14 THE COURT: So there's portions of the case that
15 are allegedly quoted here, right.

16 MR. STEIN: Yes.

17 MS. IBARRA: But it doesn't have the standard west
18 law or Lexis formatting nor a case, it seems to be
19 somebody's excerpts of a case, just for the record.

20 MR. STEIN: Well be in the record, it's Exhibit 15
21 56.

22 THE COURT: What will we're going to ask in
23 order -- as a condition of this, maybe you can printout the
24 actual case and then we'll add it to the exhibit.

25 MR. STEIN: Niall will you do that.

26 MR. FORDYCE: Sure I have it pulled up, not on
27 west law but I have the literal language.

28 MS. IBARRA: Okay.

1 MR. FORDYCE: It's right here.

2 THE COURT: So Ms. Ibarra are you going to follow
3 a- [HRO*PBG] long.

4 MS. IBARRA: Yes I'll follow along.

5 THE COURT: Okay.

6 Q. BY MR. STEIN: Can you read the part that says 11
7 one two.

8 MS. IBARRA: Can I just do a further objection.

9 MR. STEIN: And does the court --.

10 THE COURT: Wait a minute Mr. Stein.

11 MS. IBARRA: Further objection is it's not a
12 complete document and so I don't know that it reflects
13 everything that the case deals with because it's just an
14 excerpt.

15 THE COURT: I'm going to overrule it because Mr.
16 Margolis did refer to excerpts of it himself so I think
17 what the remedy would be for both of you to put in the full
18 exact -- the full case, okay?

19 A. I have a copy of it.

20 MR. STEIN: And the court has a copy.

21 THE COURT: The ex [EFRPT] I don't have the full
22 thing.

23 MR. STEIN: And we're starting with 11 one two
24 which is the third paragraph in?

25 A. Uh-huh.

26 Q. It says taking those finding as accurate we
27 [PWRAOE] get bankruptcy court that we then preclude [-RT]
28 plans petitioned, the rules of professional conduct

1 [do not|done] establish substantive legal duties, they
2 neither create augment, nor did he membership I shall any
3 duties, Cal rules of professional conducts one dash 100,
4 while the rules can be evidence of a breach of fiduciary
5 duty, they [do not|done] standing alone prove the breach,
6 seer Mehrvar a- bat a-, no such breach appeared in the case
7 and it goes on to say this is had not a case where a
8 faithless attorney has taken advantage of a client, quite
9 the reverse. In this case the [KEURBZ] took advantage of a
10 personal relationship and relieved the plan of \$40,000, the
11 rules of professional conduct were designed for particular
12 purposes they were not intended as a protection for clients
13 who wrong their lawyers. Is that the case that you
14 referring furred to before?

15 A. Yes.

16 Q. And you've stated to the court that there was some
17 problem with fiduciary duties present or not present, it
18 didn't mean that you can't make offensive use of the rules
19 of professional conduct to show void contracts when all
20 you're trying to do is get out of payment of debts,
21 offensive use?

22 A. That's not what it -- that's not what that case
23 says.

24 Q. What does it say in your opinion?

25 A. It says that here there was no breach of fiduciary
26 duty, there was a breach of rule 3-300 but that if did not
27 rise to the level of it being a fiduciary breach and for
28 that reason the court was not going to allow the pro [POE]

1 [TPHEPTS] of that argument to benefit from it especially in
2 light of the fact that the court determined that they were
3 trying to cheat the attorney so they weren't going to allow
4 him to use simply the rules. Here it's different because
5 there were fiduciary -- there were fiduciary breaches with
6 3-300.

7 Q. What fiduciary breaches were there?

8 A. There was a failure of full un biased disclosure
9 to the client and there was also conflicts that permeated
10 the entire relationship and there were conceal [-PLTS].

11 Q. Well you say that those -- those sound like rule
12 violations, while the rules can be evidence of a breach
13 they do not standing alone prove the breach [-FRBGS] all
14 you've talked about is rule violations not actual breaches
15 of fiduciary duty?

16 A. That's not true I spoke about breaches of
17 fiduciary duty.

18 Q. You just stated. Are there more than you've
19 stated?

20 A. Are there more than what you stated.

21 Q. Breaches, what you think are breaches of fiduciary
22 duty, you talked about rule violates violations as if they
23 are breaches of fiduciary duty?

24 A. No by themselves they are of course necessarily
25 but if the breach is a breach of fiduciary duty then they
26 are evidence of it.

27 Q. What breach of fiduciary duty?

28 A. Let me finish.

1 Q. Are you referring to.

2 THE COURT: Let him finish -- let him finish Mr.
3 Stein. Go ahead?

4 A. Rules of professional conduct are used along with
5 statutes and principles of fiduciary duty all together to
6 determine whether there has been a breach of fiduciary
7 duty. A mere breach of the rules does not necessarily mean
8 that there's a breach of fiduciary duty. However if there
9 are other matters surrounding it, like concealment or
10 advice which is not unbiased or a conflict which pervades
11 the relationship and the client is not even informed of it,
12 then that would be a breach of fiduciary duty.

13 Q. No you just referred to three rule violations and
14 then said that they're not breaches of fiduciary duty and
15 now you're label those violations as breach of fiduciary
16 duty. What in addition to a rule violation do you find as
17 a breach of fiduciary duty?

18 A. There's a breach of fiduciary duty of undivided
19 loyalty, there's a breach of the duty of full and un
20 biased.

21 Q. What is the breach of fiduciary duty of undivided
22 loyalty?

23 A. I'm sorry I --.

24 THE COURT: Mr. Stein let him finish and then you
25 can ask your follow-up question.

26 MR. STEIN: Thank you Your Honor.

27 THE COURT: Undivided loyalty was one?

28 A. Un divided loyalty and also the full and un biased

1 disclosure of the nature of the relationship and the
2 circumstances of the matter.

3 Q. If the SMDC agreement says there's no fiduciary
4 duty and the SMDC agreement says there is no
5 attorney-client relationship how can there be a breach of
6 an undivided loyalty, what loyalty need there be?

7 A. You're assuming that because it says that these
8 relationships don't exist, that is the attorney-client and
9 the fiduciary relationship, therefore, they don't. And
10 that's what I was talking about before you're relying upon
11 this Bible and saying look here's what we said and even if
12 I performed [WHR*EZ] [-Z], although you didn't say that,
13 even though I performed certain services which the law
14 would constitute attorney-client services, I didn't provide
15 them. Even -- I'm not done, even though I have served in
16 certain rolls in the -- in the tribe which create fiduciary
17 obligations, we're going to say that they don't.

18 Q. Aren't you simply?

19 A. Even hoe -- even though the tribe.

20 Q. Jesus Christ?

21 A. Has learned to have depend on me and even before I
22 put a resolution before them they sign it, even though they
23 look to me as their attorney none of that matter because I
24 gave them this [TKORPLT] to sign and it says that I'm not
25 an attorney and there's no fiduciary relationship. Okay
26 so --.

27 Q. Aren't you in fact manufacturing ethical
28 violations for an offensive purpose just to GT Tribe can

1 get out of their debts?

2 A. No.

3 Q. You're manufacturing ethical violations left,
4 right [UB] up and down, nothing seems to matter, you've got
5 offensive use, Resolution 46 doesn't matter, lobbying which
6 you first said was not legal work now you say lobbying
7 creates an attorney-client relationship isn't that correct?

8 A. You have just mentioned three things and you're
9 wrong you have misstated various matters.

10 Q. You a- stated that negotiating across the table
11 from somebody but then saying hey I advise you to accept
12 our legal argument, it's good for you, we'll get this
13 contract [do not|done], that is enough when negotiating
14 across the table to create an attorney-client relationship
15 correct?

16 A. Who's on the different sides of the --.

17 Q. Mr. Stein for SMDC?

18 A. Uh-huh.

19 Q. Well-known to be for SMDC advising the tribal
20 council adopt this resolution, sign this contract, you're
21 saying that that negotiating across the table is enough to
22 create an attorney-client relationship?

23 A. Well you're referring to it as negotiating across
24 the table, I'm referring to it as giving legal advice to a
25 tribe which has learned to depend upon you for legal
26 advice, you did not warn them, we have a conflict, I'm
27 negotiating with you, watch out for me.

28 Q. They had legal counsel, they had a document for 35

1 pages that showed that it was clearly adverse, Stein is
2 obviously representing SMDC and signing for SMDC, he's
3 across the table negotiating and you said the mere advice
4 to say I want you to sign this is enough to create an
5 attorney-client relationship?

6 A. I did not say in that context what you just said.
7 Anyway do you have a question.

8 Q. Well you've answered it, you said you're now
9 withdrawing exactly what you testified to earlier?

10 A. No, I'm not. You can characterize it as you want.
11 What you're characterizing, almost everything you've said
12 now has been wrong.

13 Q. You're saying Resolution 10 -- we have had
14 testimony that Resolution 10, that they -- nobody thought
15 that Mr. Stein was their attorney but you're saying --

16 MS. IBARRA: Objection misstates testimony.

17 MR. STEIN: -- that when Stein simply advised.

18 THE COURT: Sustained, ask another question.

19 MR. STEIN: Very good, very good.

20 Q. And you're saying it's not enough to have
21 independent counsel that GT Tribe may have had their own
22 independent counsel but Mr. Stein became a second counsel
23 for them even though he was across the table in Resolution
24 46 is that correct?

25 A. When you say across the table you're giving the
26 impression that it's clear loaf an adversary situation and
27 that they're not relying on you as their attorney and
28 you're not giving them legal advice. So --

1 Q. There's no them sir it's GT Tribe an organization,
2 there's no them, it's an organization, it's not an
3 individual?

4 A. Do you have a question.

5 Q. Yes. As an organization, why do you say having an
6 independent counsel for an organization is not enough that
7 the person across the table that's clearly adverse in fact
8 becomes their counsel as well?

9 A. Because you -- you were giving them legal advice
10 from the very beginning, you advised them to adopt the SMDC
11 agreement, you seen told someone as I understand it that
12 she couldn't take it home with her to look at it and that
13 you have been -- if you're talking about the SMDC
14 agreement, there wasn't any attorney there. By the way you
15 did but you said earlier?

16 A. But --.

17 THE COURT: Let him finish?

18 A. By the way, if you weren't their attorney why
19 would you have put into that agreement and a Resolution 10
20 that you were advising them to get independent counsel or
21 that they could get independent counsel. And also in that
22 agreement why would you disclose some other conflict but
23 not the one that we're talking about here so --.

24 Q. BY MR. STEIN: Can we go to exhibit 569 Paragraph
25 23?

26 A. Where is that.

27 Q. And after that I'll ask you about Resolution 10 as
28 well. It was the white notebook sir?

1 A. Which one.

2 Q. That one right here?

3 A. Okay which.

4 Q. If you'll pull it over here I'll show you, I just
5 don't want to reach across you?

6 A. It's okay.

7 Q. So exhibit 569, section 23?

8 A. I'm sorry.

9 THE COURT: Do you need to take it out.

10 MR. STEIN: No.

11 THE COURT: Okay.

12 THE COURT: What page?

13 A. Yeah what am I looking at here.

14 MR. STEIN: Just a minute. This thing is a mess.

15 MR. STEIN: Page 49 four, we've seen it several
16 times before?

17 A. Page 49 four, right, okay. Just a minute. And
18 which document is this, this is.

19 THE COURT: Mr. Stein judge don't you turn to the
20 page for him so --.

21 MR. STEIN: It's right here, I turned it to him,
22 he's turning away?

23 A. So which document is it.

24 MR. STEIN: This is [TK*FRPB] --?

25 A. It's the SMDC agreement, all right.

26 Q. Section 23 says legal advice, the [HAOERTS] here
27 to acknowledge that they have been advised and encouraged
28 to see legal advice from independent counsel and given the

1 opportunity to do so.

2 THE COURT: The prior --.

3 MR. STEIN: Judge that --.

4 THE COURT: Prior to the signing of this
5 agreement.

6 MR. STEIN: Prior to the signing of this
7 agreement.

8 Q. Why does that of course provide compliance with
9 3-300?

10 A. By itself, no. What I testified the other day, I
11 had my chronology wrong, I think I said there wasn't any
12 such advice. There was advice in here.

13 Q. Yeah huh testified that this [TK*FRPB] did not
14 exist that's why we're reading now?

15 A. Yeah.

16 Q. You said this did not exist even though it was
17 smack in front of you?

18 A. Yeah I mistake -- I made a mistake as to the
19 chronology of documents, I was thinking of other documents
20 that did not provide that advice but here the advice --
21 just a minute. Yeah but here the advice is not sufficient
22 because it did not advise of the existence of a conflict
23 and in the resolution it details what supposedly Mr. Otto
24 did, what his involvement was, it's my understanding that
25 that was [TP*EUBGS] that that never occurred so that would
26 have provided a presentation to the tribe giving them the
27 impression that they were fully protect the and that Mr.
28 Otto look at these things, when in fact I understand he had

1 nothing to do with it.

2 Q. Again you're [con|could not] [KHREUBGT]

3 [TKEUFBGT]-g your earlier testimony sir?

4 A. No.

5 Q. Your earlier testimony was huh didn't have to have
6 an attorney simply giving -- advising that they should have
7 one and giving the opportunity to do so, why does section
8 23 not comply with that requirement for GT Tribe which is
9 an organization not an individual?

10 A. No you did advise them to get independent counsel
11 but then misled them with the impression that Mr. Otto had
12 done all these things in the resolution when Mr. Otto had
13 not done any of those things as I understand it.

14 Q. And rule 3-300 says --?

15 A. And -- and also, besides that, there was no
16 statement as to what the conflict was and so if there was
17 no independent counsel, if there was no independent
18 counsel, then the Yaspan principle would not apply and you
19 would not only have to reveal the terms of the agreement,
20 the fact of the conflict but you'd also have to advise them
21 of the pros and cons and warn them against you as you won
22 would be warning them against a third person.

23 Q. Rule 3-300 cells B the client is [SREUPTZ]-d in
24 writing that the client may seek the advice of an
25 independent lawyer of the clients choice and is given a
26 reasonable opportunity to seek that advice. Why does
27 section 23 not comply with the language of 3-300?

28 A. It complies because you advised them to give

1 independent counsel but then doesn't give them the
2 reasonable opportunity because it gives the impression that
3 far they already had counsel which they didn't.

4 Q. What gives them that impression?

5 A. There's a list in the resolution it describes a
6 number of things that supposedly Mr. Otto did in terms of
7 reviewing it all and assisting the tribe and as I
8 understand it, Mr. Otto did none of that.

9 Q. And they knew what Otto did and didn't do was
10 their testimony, they knew what he did didn't do they had
11 two letters from him.

12 MS. IBARRA: Objection misstates testimony?

13 A. I don't understand what Mr. Otto did.

14 THE COURT: Sustained, are you asking fifth
15 question Your Honor.

16 MR. STEIN: No let's move on, I'm running out of
17 time.

18 THE COURT: Okay stricken.

19 Q. BY MR. STEIN: You said yesterday the SMDC
20 agreement was irrelevant correct, you said that?

21 A. Yes.

22 Q. Four or five times?

23 A. Yes.

24 Q. Can we again go back to the first opinion, the
25 quote on Page 2 of the opinion that we we have seen several
26 times before now?

27 A. Is it okay if I move this.

28 Q. No if you can just leave that there. The quote

1 2349 black book that we read from before.

2 THE COURT: Well he's going to have to move it
3 inform find the black book?

4 A. No, it's not the black book, what's the document
5 you're looking at.

6 THE COURT: Well I think it's in the black book,
7 is that right Mr. Stein.

8 MR. STEIN: Yes, it is Your Honor.

9 THE COURT: So you need to get the black book. My
10 understanding the black book contains the Mills opinions.

11 MR. STEIN: Yes.

12 THE COURT: Okay thank you.

13 MR. STEIN: And the quote that we've read from
14 opinion. Of the me read it again, just a minute because?

15 A. Okay.

16 Q. In the middle it states for that reason we believe
17 that in determining whether an attorney-client relationship
18 exists in cases like this, primary attention should be
19 given as to whether the totality of the circumstances, and
20 it goes on t looks at the totality of the circumstances?

21 A. Yes.

22 Q. Why do you say the SMDC agreement is irrelevant
23 when it would seem that they're part of the totality of the
24 circumstances when determining when -- whether this
25 organization, GT Tribe was an organization, in determines
26 whether that [HOERGS] an attorney-client relationship, why
27 do you say SMDC is irrelevant to the totality of the
28 circumstances?

1 A. It's irrelevant because the relationship that I'm
2 referring to took place outside of that agreement and
3 whatever that agreement says, even if it was within that
4 agreement it was a breach of that agreement. We're talking
5 about what the world reality is, what actually happened
6 here, was there a attorney-client relationship, was there a
7 fiduciary relationship. That can't be evaporated by
8 looking at those words.

9 Q. Thank you and I'd like to return to the white
10 notebook if you will, Section 19 of the SMDC agreement,
11 exhibit 569.

12 MR. STEIN: [HR*EUT] limitations of [KPAOEUBT],
13 can you read that section please.

14 THE COURT: What page was that.

15 MR. STEIN: [PA*EUPBLGZ] pages 49 three to 49
16 four?

17 A. Okay and notwithstanding anything else in this
18 agreement or otherwise, neither Tongva nor developer will
19 be liable with respect to any subject matter of this
20 agreement under any contract, under any contract
21 negligence, strict liability, or other legal or equitable
22 theory for any incidental, special, exemplary, or
23 consequential developer shall not be liable for willful
24 misconduct --.

25 Q. Shall only be.

26 A. Shall only be, yes you're right for willful
27 misconduct or gross negligence in connection with any
28 services rendered under this agreement.

1 Q. Aren't you not only using -- well forgive me, let
2 me start my question over. Aren't you simply coming up
3 with a theory under this agreement that is a contract
4 theory, a negligence theory a strict liability or other
5 legal or equitable theory, aren't you simply concocting a
6 theory to get around the SMDC agreement when in fact the
7 organization specifically agreed with the subject matter
8 that there be no damages for those theories?

9 A. No.

10 Q. You're -- why do you say you are not concocting a
11 theory under contract negligence, strict liability or other
12 legal or equitable theories?

13 A. I'm not talking about strict -- strict liability
14 or any of these theories, I am -- and I'm not concocting
15 anything, what do you mean by concocting 1234 I'm asking
16 you to clarify the question.

17 THE COURT: Does that mean you don't understand
18 the question?

19 A. I don't understand.

20 THE COURT: Okay.

21 Q. BY MR. STEIN: Concocting, spitting out theories
22 about soccer mom's based on did you mean mistakes, holding
23 the agreement is irrelevant, saying independent counsel is
24 not enough, saying independent counsel in fact not
25 independent.

26 MS. IBARRA: Objection.

27 MR. STEIN: [SA*EUBGS] saying negotiating across
28 the table creates an attorney-client relationship, saying

1 that lobbying is legal work saying that reso 46 language
2 doesn't update the agreement, saying that the reso 10
3 language does not contain legal advice and saying that in
4 re: Kirsh offensive use is okay despite that, though
5 theories.

6 THE COURT: And what is that.

7 MS. IBARRA: My objection is that.

8 MR. STEIN: That you concoct [-BG].

9 MS. IBARRA: Is that some of those are
10 hypotheticals that counsel came up with and Mr. Margolis is
11 just responding to them so argumentative as concocted and
12 vague.

13 THE COURT: Argumentative possibly but definitely
14 compound so I'm going to sustain the objection.

15 MS. IBARRA: Yes?

16 A. And the answer is no.

17 Q. BY MR. STEIN: The answer is no. You have don't
18 feel Section 19 is GT Tribe's agreement that me would not
19 do exactly what you're doing today which is coming up with
20 a series of theories manufactured ethical violations?

21 A. There's so much in what you just said and I can't
22 agree with that.

23 Q. Why not?

24 A. Because I -- first of all.

25 MS. IBARRA: Objection compound?

26 A. It's not even a specific question.

27 THE COURT: Sustained?

28 A. So it's unintelligible.

1 THE COURT: Sustained.

2 MS. IBARRA: And unintelligible.

3 THE COURT: So he does haven't to answer it. Do
4 you want to break it down you can. You're out of time but
5 I'm going to give you a little more time because we spent
6 some time fumbling through these books.

7 MR. STEIN: Well we have his -- let me understand,
8 you're saying no that the theories in this case are not
9 covered by Section 19 what.

10 Q. That you put forward in this case?

11 A. I don't understand the question. I can tell you
12 what I have put forward are ethical and fiduciary
13 violations and some other things.

14 Q. I'll use my remaining time for page 49 four, third
15 party beneficiary. Do you see that Mr. Stein was a third
16 party beneficiary of this SMDC agreement?

17 A. I understand he was the beneficiary of it as the
18 manager of SMDC and that's according to what you said Mr.
19 Stein and what Mr. Mills said.

20 Q. But it says any other party other than Stein, it
21 says Stein is a party?

22 A. Well yes and you interpreted that and Mr. Mills
23 interpreted that to refer to you as a third party
24 beneficiary but you as an SMDC manager or president.

25 Q. It doesn't say as SMDC manager [T-FRPBLTS] doesn't
26 say it.

27 Q. It says Stein?

28 A. No, no, it does not -- you're right it does not

1 say that.

2 Q. So?

3 A. It says what it says and you said --.

4 Q. Why do you say that Mr. Stein was not provided the
5 benefit of all the no attorney-client relationship clauses
6 of this agreement?

7 A. I don't understand the question.

8 Q. Okay. No further questions.

9 THE COURT: All right. Any redirect.

10 MS. IBARRA: Yes just very briefly. Can we take a
11 bathroom break right before we start, I probably have only
12 10 minutes.

13 THE COURT: All right then let's take a 10-minute
14 break.

15 (Break taken.) 11:15 AM to 11:24 AM.

16 THE COURT: Gabrielino versus Stein, BC361307.
17 Redirect.

18 MS. IBARRA: Yes.

19 Q. BY MS. IBARRA: Mr. Margolis can we briefly touch
20 [PWOPB] the documents that you reviewed and relied upon in
21 forming your expert opinion. Can you give me some more
22 specific explanation of some of the documents that you
23 used.

24 MR. FORDYCE: Asked and answered.

25 THE COURT: Sustained. Why are we going through
26 this, is there something that was missed is that why you're
27 trying to.

28 MS. IBARRA: Well I just wanted to get some more

1 specific explanations about some of the specific documents
2 including declarations.

3 MR. FORDYCE: Objection he has been asked multiple
4 times what he reviewed and he has been very specific about
5 what he reviewed, asked and answered, same objection.

6 THE COURT: I may --.

7 MS. IBARRA: Your Honor can we take judicial
8 notice of the motion for summary adjudication that was
9 filed here.

10 THE COURT: Yes, if it's in the court docket.

11 MS. IBARRA: Yeah, it's in the court files.

12 THE COURT: I can take judicial notice of it.

13 MS. IBARRA: Including and especially the appendix
14 and the numerous declarations therein. So all the
15 documents associated with the Plaintiff GT Tribe's motion
16 for summary adjudication might have been misfiled as motion
17 for summary judgment, but it was motion for summary
18 adjudication it was filed on February 9th.

19 MR. FORDYCE: Your Honor, is counsel directing --

20 MS. IBARRA: I'm just asking --

21 MR. FORDYCE: -- the witness.

22 THE COURT: No, she's talking to me.

23 MR. FORDYCE: Okay.

24 MS. IBARRA: I'm just asking but I wanted all of
25 the documents and everything in there to be taken judicial
26 notice of so it's clear -- it's not like he just read
27 Points and Authorities, there was a lot of evidence there.

28 THE COURT: Well the witness said he reviewed the

1 motion for summary judgment slash summary adjudication, I'm
2 assuming it's all the documents in connection including any
3 documents attached as declarations, so that's already been
4 covered to let the parties know, I'm assuming when he says
5 he reviewed it it includes all those things so yes, I can
6 take judicial notice of it, it's in the court file but the
7 [TKOERT] understand that is what is meant I don't want to
8 you spent too much [TPOEUPL] going over that.

9 MS. IBARRA: No I just [WHAUPBT] to skim [SK*] him
10 about the declarations, if he recalls specific declarations
11 can I ask about the declarations.

12 THE COURT: If he remembers specific [T-Z].

13 MS. IBARRA: Yes.

14 THE COURT: Okay sure.

15 Q. BY MS. IBARRA: Mr. Margolis do you remember any
16 specific declarations that you reviewed?

17 A. I can remember that I -- I saw the Barrett
18 declaration, the Lamothe, the Aronson declaration, I saw
19 Virginia Carmelo, is that her name.

20 Q. Yes?

21 A. I saw Polanco's and I saw maybe three or four
22 others.

23 Q. Okay thank you we'll move on with that, as long as
24 the Court's taking judicial notice of that. So my next
25 question is in regards to your current testimony today was
26 that you wanted to revise your chronology had you said?

27 A. Well.

28 Q. Can you give me a fuller explanation please?

1 A. Yes. I have no further questions mistaken when I
2 testified yesterday, I said that the SMDC agreement, it did
3 not advise them to get independent counsel, that's not
4 true, I have no further questions mistaken as to the
5 chronology and I testified about part of that here today.
6 It is true that it advises them to give independent counsel
7 but it --.

8 Q. Does that change your opinion?

9 A. Let me finish.

10 THE COURT: Let him finish.

11 MS. IBARRA: All right I will?

12 A. It [SREUPZ]-d them -- they did advise them to get
13 behind counsel but that does not change my bottom line
14 opinion as to the -- that the agreement was in the
15 violation of the rules of professional conduct and
16 fiduciary duty.

17 Q. Can you explain why it doesn't change your
18 opinion?

19 A. Yes. He advises them to -- that they can get
20 independent counsel in Resolution 10 and the SMDC agreement
21 but then it goes in -- I mentioned this before, it goes
22 into great detail about what Mr. Otto did but he never did
23 that so he didn't give them the opportunity to get
24 independent counsel he told them that they already had it
25 but aside from that, he did not describe the conflict.

26 THE COURT: Well who's he, when you say he did not
27 describe the conflict?

28 A. Mr. -- Mr. Stein. That agreement does not

1 describe the conflict and since they were not represented
2 by counsel, the Yaspan principle would not apply so then he
3 would be under an obligation to disclose the fact of the
4 conflict but also he would also have to advise them as to
5 the pros and cons and warn them against himself h he didn't
6 do that so those [WR-RL] -- so both Resolution 10 and the
7 SMDC agreement were in violation. And then as to the
8 resolutions and matters that came up afterward ratifying
9 it, resolution 17 of April 29, 2011, there is no statement
10 to get independent counsel and as I understand it there
11 wasn't yet any counsel so Yaspan doesn't apply and there
12 isn't any disclosure as to a conflict. And then resolution
13 20 which -- oh resolution 17 purports to ratify and adopt
14 the prior agreement, alleged agreement, then resolution 20
15 of April 29th, 2011, again it purports to ratify and adopt
16 but there's no advice regarding independent counsel. It
17 does refer to Ed Hamburger but there's no explanation as to
18 who he is and there's no disclosure of the fact of a
19 conflict. And so without counsel, Yaspan would not be
20 applicable which would mean that he would not have to only
21 disclose the fact of a conflict but he would also have to
22 warn the tribe against himself. Resolution 37 of January
23 27, 2002, it approves amendments to the SMDC agreement and
24 modification and purports to ratify and adopt prior
25 matters. There was no advice to get independent counsel
26 but there was Rae Lamothe and as we discussed she was not
27 independent counsel. And there isn't any disclosure of the
28 fact of the conflict. Then there's Resolution 46,

1 September 28, 2003 which again purports impact ratify and
2 adopt and re approve the prior -- prior matter but there
3 isn't any advice to obtain independent counsel but refers
4 to the tribal attorney, again --.

5 MR. FORDYCE: Your Honor he's just reading his
6 notes again, we're guest [-BG] the same testimony it's
7 cumulative it was over and over and over, he was asked a
8 specific question, he answered it to a certain extent and
9 we're now five minutes into an answer that is just
10 restating his testimony, he's already testified to this.

11 MS. IBARRA: He's clarifying the chronology.

12 MR. FORDYCE: He had a chance to clarify, he was
13 asked?

14 A. No.

15 THE COURT: Well I do here? [SPH*] testimony
16 about other resolutions, so I'm not sure it's the exact
17 same testimony, some of it is repetitive, maybe if you can
18 just get to the new things?

19 A. All I have is like two minutes. So Resolution 46,
20 September 28th, 2003 it purports to ratify and adopt, there
21 isn't any advice to get independent counsel, it refers to
22 tribal council gave the impression that they had counsel
23 and that they were protected but there was not independent
24 counsel and there's no discussion of a conflict, there's no
25 disclosure of that. And then there's the amendment.

26 MR. STEIN: Your Honor this has nothing to do with
27 the cross-examination?

28 A. It does.

1 MS. IBARRA: This is conclusion, this is just his
2 concluding testimony.

3 THE COURT: Overruled?

4 A. And then there's the amendment and modification of
5 August 10, 2003 which it purports to ratify and amend and
6 again there isn't any advice to obtain independent counsel
7 but refers to Lamothe and we have the same issue as to --
8 as to independent counsel, there wasn't any -- and there
9 isn't any disclosure as to conflict. And I believe at that
10 time there wasn't any counsel which would mean not only
11 would he have to disclose the conflict but also he would
12 have to describe the pros and cons and then there's the
13 letter amendment of May 20, 2006 which [PH*EPBDZ] the S M
14 -- purports to amend the SMDC agreement, it's signed by
15 Mr. Stein as an attorney I believe, I'd have to look at it
16 again, there is no advice to get independent counsel and
17 there is no disclosure of the conflict. So the question is
18 did my mistake as to the chronology affect my opinion as to
19 whether these transactions are void and as to whether they
20 violated the rules of professional conduct, it doesn't
21 affect that and I've just explained why.

22 MS. IBARRA: Okay so one final question.

23 THE COURT: All right one final question, Mr.
24 Fordyce do you have any question.

25 MR. FORDYCE: No I'm fine thank you Your Honor.

26 Q. BY MS. IBARRA: So my [KW*E] one final question is
27 assuming that there's been testimony that when originally
28 presented with the SMDC agreement in 2001 the tribal

1 council members [con|could not] take -- who were presented
2 with the SMDC agreement couldn't take it home with them.

3 How does that affect your [TPHAL] [S*EU] sister?

4 A. It affects --.

5 MR. FORDYCE: Asked and answered.

6 THE COURT: Well Mr. Stein asked about it.

7 MS. IBARRA: Yeah I want to give him a fuller
8 opportunity to explain.

9 THE COURT: Overruled?

10 A. It would add an element of concealment and
11 overreaching that would add to the issue of moral
12 turpitude, '61 zero six in the business and professions
13 code.

14 Q. Is there anything else you would like to add
15 before we conclude?

16 A. No that's fine thank you.

17 Q. Thank you.

18 THE COURT: Mr. Fordyce you didn't have any
19 questions.

20 MR. FORDYCE: No I'm fine Your Honor thank you.

21 THE COURT: All right thank you sir you may step
22 down.

23 MR. STEIN: He's [TKO*UPB] [do not|done] now
24 right.

25 THE COURT: My understanding is he's finished,
26 yes. He is finished. And.

27 MR. STEIN: And Your Honor.

28 THE COURT: I didn't know if we had anything more

1 today or we were just going to conclude with Mr. Margolis.

2 MR. STEIN: Yeah I think we were going to conclude
3 with Mr. Margolis but I'm just wondering if this wouldn't
4 be a good chance too show the compliance that we made with
5 the Court's request ask there's in objection to the
6 compliance that's been made so it would seem to be a good
7 chance to straighten out any processing points.

8 THE COURT: Okay thank you. Okay did you bring
9 the letter you wrote to the L.A. Sheriff's Department,
10 instructing the Sheriff's Department to give the seized
11 evidence to Linda Candalaria, this would be the seized
12 letter on the writ.

13 MR. STEIN: I think I have that letter but it may
14 [TPH-B] there, I didn't know I was supposed to bring it.

15 THE COURT: Yeah that's one of them. All right so
16 that's one you need to produce, you said that's not in the
17 group here but you have it so you need to bring that one.
18 And then there's -- well it's in the minute ordinary,
19 February 17th to bring the letter for the Sheriff's, that
20 you wrote to the Sheriff's Department, did you not see the
21 Minute Order.

22 MR. FORDYCE: I have haven't seen it.

23 MR. STEIN: None of us have seen the Minute Order.

24 THE COURT: Oh.

25 MR. STEIN: But once again let me see -- right now
26 because I remember seeing something like that but I
27 believe --

28 THE COURT: Well while you're looking for that Mr.

1 Stein is ordered to bring to court any letters or e-mails
2 from Seyfarth Shaw giving him instruction [TOZ] write
3 letters to Union Bank or Wells Fargo.

4 MR. STEIN: I looked for those and they're just no
5 longer on my computer, Your Honor.

6 MS. IBARRA: Your Honor.

7 MR. STEIN: It's been too long, it's been too
8 long.

9 THE COURT: Then we'll just [STRAO*EUB] strike the
10 testimony then concerning that.

11 MR. STEIN: Well Your Honor why would you strike
12 the testimony just because you can't profession [TKAUS] a
13 letter when there was oral testimony saying that I was the
14 person that did this and I was the person that received
15 the --.

16 THE COURT: Because it's unreliable.

17 MS. IBARRA: Yeah.

18 MR. STEIN: Well that would go to the weight given
19 by the Court it would not go to striking the testimony for
20 the record for appeal.

21 THE COURT: All right. In fairness, fine, I can
22 give it then. Pardon?

23 MS. IBARRA: It goes to the spoliation doctrine,
24 that was critical. There's actually evidence that
25 contradicts him. There's e-mail testimony from Mr. --

26 THE COURT: Then the court will take that into
27 consideration then, if there's contradictory evidence and
28 it's in writing, then and the court can give a little

1 weight to Mr. Stein's testimony and I think he's right
2 about that. He claimed he had it so we ordered him to
3 bring it, now he's saying he doesn't have it, so.

4 MR. STEIN: No, no.

5 THE COURT: And that's the effect.

6 MR. STEIN: Your Honor, one of the difficulties is
7 11 years ago PDF's were not common and they certainly
8 weren't common in my office. So to make sure that
9 everything got into a PDF is not like it is today where you
10 just hit a button and you make a PDF. And so to find the
11 Seyfarth Shaw e-mails back and forth 11 years later, I've
12 gone through 5, six, perhaps seven computers in that time,
13 it simply does not seem like it survived and that's why I
14 told the court I thought I had it, but I told the court at
15 the tie I might not because of those five, six, seven
16 computers and the fact that 11 years as PDFs were not
17 common.

18 THE COURT: I'm just saying if you can't reduce it
19 the court gives it --

20 MR. STEIN: Your Honor I would like to say
21 something else and you know we've had all sorts of
22 allegations with zero documents here from one side of the
23 table. And then anything on this side of the table --

24 MS. IBARRA: Mischaracterized what happened?

25 MR. STEIN: -- the court seems to be holding us to
26 a higher standard saying if you don't have a document, it's
27 not believable, whereas on the other side of the table they
28 no documents for any of their allegations.

1 MS. IBARRA: Yes.

2 MR. STEIN: And yet they go on for -- for 14
3 weeks they've gone on with unsupported allegations without
4 documents it just seems unfair to me that one side of the
5 table gets a pass and the side of the table is held to
6 strict standards.

7 MS. IBARRA: That's patently false. We've had
8 tons of documentary evidence and most of it was drafted by
9 Mr. Stein including his own e-mails, his own legal
10 documents that he drafted, you know everything that
11 supports his contentions, it's very well preserved and
12 still we can use it to our advantage. Yes, we've relied on
13 his documents extensively because they support our
14 positions but we've had do tons of documents that we've
15 introduced and the other very important issue is that I
16 issues a writ on the tribe and took everything including
17 the rugs, everything all the documents, everything in all
18 the computers.

19 THE COURT: I'm aware of that. I'm aware that he
20 got a writ and took all the documents from the tribe, I'm
21 aware of that or could take that into consideration.

22 MS. IBARRA: Thank you.

23 THE COURT: But what I'm saying is I wouldn't
24 strike it but it does go to the weight that the court
25 [TKPWEUFSZ] any evidence, it's the same thing I said with
26 respect to resolutions, unsigned documents, right, the
27 court can only -- you know unless there's testimony that
28 they were signed then the court is going to give it a

1 little weight but the Court understands that many of the
2 documents in this case were [TPHERB] Lee in Mr. Stein's
3 possession [-RGS] some of them were taken by the tribe and
4 then Mr. Stein went and got a writ and took them back from
5 the [STRAOEUB].

6 MR. STEIN: Your Honor.

7 THE COURT: The whole process and both of you
8 think I don't but it's all in evidence so that's why I'm
9 saying the court has to -- is not going to exclude it but
10 certainly the weight the court [TKPW*ETS] gives to various
11 documents you know is in question so I mean it is what it
12 is.

13 MR. FORDYCE: And Your Honor --.

14 THE COURT: And if you don't have the document you
15 asked you in you had it you have said yes if you I ordered
16 you to return them if you don't have them had you don't
17 have them.

18 MR. FORDYCE: Just a- [HROPBGS] those [SAEUPLDZ]
19 in this case in support of Mr. Stein [*PL] [PHAORGD] was
20 testifying about these heard that they thought he was Mr.
21 Stein was there term, Ms. Carmelo [STPETZ] [AO*E] shower I
22 doctor but in 2001 without a [W*EUT] of evidence other than
23 her testimony so that is the sort of situation, she says
24 it, okay great, in the same breath [STPAO*EUPD] [STHETZ] I
25 got e-mails from Seyfarth and 11 years later I don't have
26 any computer from 11 years and I haven't pre served [-R]
27 drives myself I wasn't a lawyer at that time so Your Honor
28 is dead right to give it the weight she'll give it but

1 understand Mr. Stein's point.

2 THE COURT: I have guess any question was what
3 document was Ms. Carmelo supposed to preserve based on that
4 [KPAOUTD] [AOER].

5 MR. FORDYCE: How far about any communication
6 where it says a Jonathan you're our attorney what document
7 by that.

8 THE COURT: Well what evidence was there that such
9 a document existed.

10 MR. FORDYCE: Who knows if it did or didn't but
11 she shows.

12 THE COURT: But here Mr. Stein himself said the
13 document doesn't exist buff he doesn't have it so.

14 MR. STEIN: Your Honor if I could address the
15 first topic that the court bra up, we have a letter from
16 July 10th of 2008 to bond services of says receipt of items
17 to whom it may turn [TWHERP] [AOE] personal property and
18 items covered by bonds 43 '72 13 and four approximate '79
19 '68 very truly necessary Gabrielino-Tongva Tribe Linda
20 Candalaria tribal council woman.

21 THE COURT: So is this the letter that you wrote.

22 MR. STEIN: That's right.

23 THE COURT: Had you wrote to [HRA*URD] [HRA*UD].

24 MR. STEIN: No it was written by Linda Candalaria
25 not by me, if [EUFBG] hook this up to a printer or e-mail
26 it we can print it out right now.

27 THE COURT: I have thought the testimony was you
28 wrote a letter was the writ was to rush to you and this is

1 her saying what.

2 MR. STEIN: This is her saying we received all
3 personal property on behalf of Gabrielino-Tongva Tribe,
4 again.

5 THE COURT: From whom?

6 A. By Linda Candalaria.

7 THE COURT: Yeah but from whom was she receiving
8 the documents? What does the letter say.

9 MS. IBARRA: Mr. Stein said had he drafted it but
10 it's signed by Ms. Candalaria.

11 MR. STEIN: I did not say I drafted it. I thought
12 it was my letter, it was not my letter, it was Linda
13 Candalaria's letter. But forgive me, but Ms. Ibarra,
14 you're trying to pretend that something happened that
15 didn't.

16 THE COURT: Again, this is Candalaria's letter to
17 whom.

18 MR. STEIN: To the bond services of California.

19 MS. IBARRA: She didn't testify to this document
20 when she was here and she did testify that a lot of
21 documents were given to her by Ms. Barbara Garcia for
22 signature and she didn't understand them.

23 THE COURT: Well, the issue was when the documents
24 were seized from the Sheriff, did they go directly to
25 Candalaria or did they go directly to Mr. Stein? The
26 testimony has been the return goes to Mr. Stein. Mr. Stein
27 claimed that he directed L.A. Sheriff to give it to
28 Candalaria so we wanted to see the letter from Mr. Stein

1 directing LASD, the Sheriff's department to give to
2 Candalaria, what we don't have that what is a Candalaria
3 layer testifying a bonds company that she's in receipt of
4 documents, but we don't know where Ms. Candalaria got those
5 documents. It's not the letter we were looking for.

6 MR. STEIN: Right.

7 THE COURT: Okay so.

8 MS. IBARRA: And she wasn't helpful in her
9 testimony no return of documents.

10 THE COURT: I'll determine whether her testimony
11 was helpful or not.

12 MR. STEIN: I just want to track down or attempt
13 to comply with the court's order.

14 THE COURT: I understand. So basically you don't
15 is a it you thought you had the letter you don't what you
16 have is a different letter, okay.

17 MR. STEIN: Now does the court wants this letter
18 or not.

19 THE COURT: No, it's not the letter that you were
20 ordered to bring.

21 MR. STEIN: Very good, all right.

22 MS. IBARRA: And unless he can authenticate it, I
23 don't know what we're going to do with it.

24 THE COURT: It's not in evidence, it's nothing,
25 it's not the letter that was [REFR] [REPBSD] during the
26 testimony. So where is the application for writ and its
27 attachment did you bring that or --.

28 MR. STEIN: We have brought what we could find.

1 THE COURT: Well okay what is it -- do you have
2 all the attachments do you have the declaration.

3 MR. STEIN: It's right there Your Honor.

4 THE COURT: Well why don't you --.

5 MS. IBARRA: It's missing what I think is the
6 evidence. It was the Points and Authorities but it's
7 missing evidence, it's missing the declarations and it's
8 missing the exhibits.

9 THE COURT: So they have no declarations that's
10 what I'm looking for exhibits and declarations.

11 MS. IBARRA: And I've had people look for it in
12 the archives and apparently it's missing from the archives.

13 THE COURT: Yeah okay, so all I've got is the
14 application, I'm not looking for applications, I mean I'm
15 looking for the declarations in support of the writ of
16 attachment as well as any exhibits that would have been
17 attached those apparently are missing so it's not helpful.

18 MR. STEIN: Yeah and Your Honor the reason I
19 believe they're missing is again from 11 years ago we don't
20 have periods of time of everything. It may be that I have
21 the paper version somewhere but it would make a solid day
22 to pull it out.

23 THE COURT: It is what it is.

24 MR. STEIN: Yes, it is what it is and Your Honor
25 may I ask.

26 THE COURT: Is there more Neli.

27 THE CLERK: Yes there's two more boxes.

28 MR. STEIN: Before we got off this Toptac though,

1 again I want to invite a discussion with opposing counsel
2 and the court, once a writ is issued, it breaks any
3 causation between Mr. Stein's conduct and the loss of the
4 documents and that's black letter California law and I just
5 want to see if the court agrees that that's black letter
6 law that if the court orders a writ of attachment to grab
7 documents that breaks any causation of Mr. Stein grabbing
8 those documents, it's not, it's the court grabbing the
9 documents and that --.

10 THE COURT: If you have want me to show me to case
11 law and you want to did a brief on that that's fine.

12 MR. STEIN: We will [-BG] doing a brief on that.

13 THE COURT: Then you go ahead and do it and I'll
14 consider it but right now I'm not making nip such find
15 [STPHAOG] and I disagree.

16 THE COURT: I'm not making that finding at all.

17 MR. STEIN: But again Your Honor the cause [AEUG]
18 for writ of attachment is the misconduct found by the Court
19 and the remedy given at law, in other words the causation.

20 THE COURT: First of all, I'm not sure there's
21 misconduct found by the Court, if there was I'm not going
22 to have to look at what was presented to the court and
23 that's why I was looking for declarations and exhibits in
24 support of the writ of attachment but since I don't have
25 that I can't do that.

26 MS. IBARRA: And I think it misstates the law
27 already.

28 MR. STEIN: The Court's Minute Order stating its

1 finding is there, did the court see the Minute Order from
2 judge bid-er man.

3 THE COURT: Sure that's in the record, I want to
4 receive the declarations and the supporting exhibits that
5 were present today judge bidder man to issue the writ.

6 THE CLERK: Your Honor these are renumbered
7 exhibits.

8 THE COURT: I didn't ask for that renumbered
9 exhibits for what.

10 MR. STEIN: The court has asked for the
11 [KP*EURBTS] exhibits for different [SRAOEUD]-g SMDC
12 agreement from each [R*S] plus each resolution needs its
13 exhibits and we have assembled there for the course, I
14 might not have labeled that red well very well, I think
15 this is exactly what the court asked for, the court has
16 asked for for example 1542 may reference a document, create
17 1542 with the documents referenced, 15 43, that's what that
18 is, our best attempt at doing that.

19 THE COURT: So what I think you should do is show
20 that to Ms. Ibarra.

21 MR. FORDYCE: I think she's got it already.

22 MS. IBARRA: Well you e-mailed it.

23 MR. STEIN: We've got it [EFBLD] everything has
24 been electronically served several days ago.

25 MS. IBARRA: It wasn't several days ago.

26 THE COURT: And what else.

27 MR. FORDYCE: And same thing nor Libra.

28 THE COURT: So one is the SMDC and the other is

1 Libra.

2 MR. STEIN: Correct.

3 MR. FORDYCE: Correct Your Honor.

4 THE COURT: Okay good because the point is we want
5 the document to be internally consistent it references A
6 through D and we [WAURPBTS] toe see Exhibit A through D and
7 nothing else.

8 MR. STEIN: Your Honor.

9 THE COURT: Hold on my clerk is speaking to me.

10 THE CLERK: So give these toe Ms. Ibarra to
11 review.

12 THE COURT: Yes.

13 MS. IBARRA: Yes.

14 THE COURT: They can do it right here in the
15 documents.

16 THE CLERK: And the writ documents I'm giving back
17 to Mr. Stein.

18 THE COURT: Yeah I don't need them that wasn't
19 what I was looking for, we look that up on the docket, I
20 was looking for declarations and the exhibits, Neli maybe
21 we should just see if you can pull those up.

22 MR. STEIN: That would be much easier than trying
23 to dig it up.

24 THE COURT: Well we'll see.

25 MR. STEIN: And Your Honor if I can mention a
26 point, the Libra agreement is actually what's called a
27 closing document and the Court's criticisms criticism of
28 that document is in fact misplaced because the document

1 itself refers to everything in the document. Now part of
2 what's in the document because it is a closing document are
3 the resolutions [TKO*PLG] the Libra agreement.

4 THE COURT: Well if the Libra agreement says
5 attached at Exhibit A which is a [HR*ES] resolution then by
6 all means that resolution should be [SH-PD].

7 A. [AOEUFPLSZ] I have inn couple Ben seeds and [ET]
8 certificate of en couple [PWAP] see says Exhibit A is a
9 resolution that we passed.

10 THE COURT: So you're saying the attachment also
11 has an attachment.

12 MR. STEIN: Nods. So in the table of contents it
13 says certificate of inn [KOUPL] Ben see the the certificate
14 behind come seemed [AO*E] says [THOEUPBLD] [STHOER] [AOEFT]
15 [SEUPLTD] of couple is a the resolution, now if that's
16 not --.

17 THE COURT: That's fair.

18 MR. STEIN: Second point though I wish it was a
19 simple as then, the second is you go to the resolutions and
20 say we hereby attach the Libra agreement as Exhibit A, we
21 made a judgment, maybe right or wrong, we put the whole
22 Libra exhibit as Exhibit A to the resolution, so the
23 resolution is attached to the resolution rather than just
24 the Libra agreement without the attachments because we
25 didn't know whether the court would view that as incomplete
26 or not.

27 THE COURT: Because the resolution says attached
28 is the Libra agreement.

1 MR. STEIN: And the Libra agreement says.

2 MR. FORDYCE: Correct.

3 MR. STEIN: Here is everything including the
4 resolution so you've got a (Indicating.).

5 THE COURT: How can that be, that seems a little
6 circular.

7 MR. STEIN: No the way it works is because the
8 Libra agreement with its table of contents assembled
9 foreclosing includes the resolutions. The resolutions
10 adopt the Libra agreement, obviously without I was
11 exhibits, one ever which is a resolution, it's the kind of
12 the [TP*EUBGS] that is commonly employed in corporate
13 documents and was designed by Ms. Barrett.

14 MR. FORDYCE: I have agree with the court that it
15 is circular but unfortunately it is what it is.

16 MR. STEIN: So we thought to be over [HRAOEF]
17 inclusive rather than to segment off the Libra agreement so
18 if the court find that you now know what you're saying.

19 THE COURT: You're saying in that's what it looks
20 like then.

21 MR. FORDYCE: Yes.

22 THE COURT: Blame Barrett.

23 MR. FORDYCE: That's correct Your Honor.

24 MR. STEIN: [SKPWH] I have think Ms. Aronson may
25 have had something to do with it too. I'm only fooling.
26 Anyway. I did want to show that we did make a good faith
27 effort to respond to the Court's request for documents. I
28 will note that while we are often criticized by Plaintiff's

1 counsel she has had not made responsive [TKOPBTS]
2 [chef|she have] has also the declaration exhibits for the
3 motion for summary judgment that we cannot locate she's
4 complaining to us but she's not producing them herself.

5 MR. FORDYCE: The writ docks.

6 MS. IBARRA: No I just said that I've had people
7 look in archives for that specific declaration.

8 MR. FORDYCE: I've also looked through tens of
9 thousands of pages of documents and I have not found them.
10 Doesn't mean I'm not going to try again.

11 THE COURT: Well, have either of you looked at the
12 time court docket to see if it's in the court docket.

13 MS. IBARRA: I've gotten several documents off the
14 court docket, but that appendix it would take -- I don't
15 know if that appendix is particularly there, actually, an
16 appendix is usually very expensive to download and you
17 download everything.

18 THE CLERK: I have a declaration Your Honor but
19 it's November 2006 but it's 127 pages.

20 THE COURT: That's probably it. Well just hold
21 onto that reference and I'll take a look at it.

22 MR. STEIN: If I may, part of what you're giving
23 back to us is the actual appendix which we did have a copy
24 of.

25 MS. IBARRA: No.

26 MR. STEIN: For the declaration that's would list
27 them if it's helpful to the clerks efforts to find them.

28 THE CLERK: That's what's 127 pages but it's right

1 around the same date that the --.

2 MR. STEIN: [TPHEL] oh and so it [TP*] you'll read
3 the second page ever that.

4 THE CLERK: Oh but this is on the is the C file.

5 THE COURT: Yeah this is a B C file. Well it
6 looks likes -- the writ was obtained under which court
7 file.

8 MS. IBARRA: It was in the SC file in the west
9 district.

10 THE COURT: So we'll have to look in the SC
11 file.

12 THE CLERK: This is a writ of possession.

13 THE COURT: So the writ of attachment was in which
14 case.

15 MR. STEIN: The west district case Your Honor.

16 THE CLERK: SC.

17 THE COURT: Well we'll look for that. And this
18 was in the B C case.

19 THE CLERK: Correct.

20 MR. STEIN: And by the ways if I can point that
21 out to Your Honor.

22 THE COURT: Yes.

23 MR. STEIN: The listed declarations are Stein --.

24 THE COURT: Okay.

25 MR. STEIN: Stein declaration, Talley declaration
26 by Lorna Dertadian, you've heard testimony from Stein and
27 from Talley, Sulzer declaration, you've heard Mr. Sulzer's
28 testimony, the Talley accounting that is an exhibit in the

1 case here, the SMDC agreement that's an exhibit in the case
2 here, the investor funds agreement, that's the Libra
3 agreement, that's an exhibit in the case here, investor
4 budget that's in Exhibit E that's an exhibit in the case,
5 the tribes constitution is not an exhibit, Gabrielino
6 tribal gaming authority ordinance is not an exhibit, the
7 Wells Fargo account statement of October 31st, that's the
8 Wells Fargo account that was drained by Ms. Aronson, the
9 tribes complaint against SMDC which the court is in the
10 docket, unpaid vendor invoices which are listed in the
11 Talley report, the tribes website, Polanco's biography, an
12 L.A. Times article, the Seyfarth Shaw demand letter of
13 November 2, which was an exhibit in the case and the
14 declaration of Jeffery Long, re: Ex parte notice which is
15 just because it was brought ex parte so about 90 percent of
16 this stuff for the writ has been in front of the court in
17 the last 14 weeks.

18 MS. IBARRA: But not the declarations.

19 THE COURT: Yeah the declarations, I don't know I
20 haven't seen any declarations but the the court will
21 consider what's in the report, okay. Is this Mr.
22 Margolis'? It's not mine.

23 MS. IBARRA: Let me review it to see if it is.

24 THE COURT: It's got tabs and things so.

25 MS. IBARRA: Yeah somebody notes.

26 THE CLERK: And Your Honor Monday.

27 MS. IBARRA: Oh yeah this is what he reviewed.

28 THE COURT: So Monday what are we doing, who's

1 coming in Monday.

2 MR. STEIN: Well we have a problem now, Steven
3 Johnson is available this week, he's not available next
4 week, he was coming in Friday which I understand that we're
5 opinion going to be doing any more so I would hope that the
6 court will have indulgence if he's not available. He was
7 available for Thursday and Friday.

8 THE COURT: Well I don't have any information that
9 he's not available.

10 MR. STEIN: I believe I said that when we tried --
11 he was supposed to be here Thursday with Barbara Garcia and
12 the court said no and then he -- we said that we would re
13 schedule him to Friday and that he wasn't available next
14 week and the court has now made it impossible for him
15 to testify but I will see if he can change his plans.

16 THE COURT: So Monday we have Garcia and possibly
17 I don't know son.

18 MR. STEIN: Hopeful low Johnson.

19 MR. STEIN: And then the rest of the case would be
20 Stein's various rest breaks inform people the quantum
21 merit for [SKPRAEUPB] SMDC.

22 THE COURT: That all [KOPLTSDZ] through you have.

23 MR. STEIN: And then the --.

24 THE COURT: Correct that [AULD] documents [THRULT]
25 you.

26 MR. STEIN: Yes, well once again, Mr. Johnson and
27 Ms. Garcia would hopefully help.

28 THE COURT: Yeah when they're here you can get

1 that testimony out.

2 MR. STEIN: Yeah I just hope that the court will
3 give us leeway if Mr. Johnson's available like on Thursday or
4 Friday that we can come in, I know this court wants to move
5 on to other cases.

6 THE COURT: Well what will happen if we're going
7 to move on to Mr. Stein's testimony be prepared if you have
8 don't have the witnesses you need to fill in, so you will
9 have to begin your testimony, if he's not here Thursday,
10 we'll go through get your testimony and we'll recess for a
11 couple days and take Johnson for an hour later, so be
12 prepared to finish your testimony if these people are
13 unavailability.

14 MR. STEIN: Very fair, thank you.

15 THE COURT: All right. So that's it.

16 MR. STEIN: That's it, thank you.

17 THE COURT: Johnson testimony, Barbara Garcia
18 testimony, you're going to get everything out when you get
19 them here so they don't have to come out and get them back a
20 couple times.

21 MR. STEIN: Very short testimony an hour each.

22 THE COURT: And Mr. Stein's testimony.

23 MS. IBARRA: So that's Monday, Monday is Garcia
24 and Johnson.

25 THE COURT: Hopefully Johnson, Garcia is not a
26 problem though right. Not Monday, Monday 10:00 a.m..

27 THE COURT: Okay she's not a problem.

28 MR. FORDYCE: Great.

1 THE COURT: So in the events Johnson is not here
2 Mr. Stein we're going to call on you, okay.

3 MR. STEIN: Right.

4 THE COURT: All right thank you 10:00 o'clock then
5 on Monday 123450 thank you.

6 MS. GOAD: Have a good weekend. 12:00 PM.

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