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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CIVIL COMPLEX CENTER

TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA; TWENTY-NINE PALMS ENTERPRISES CORPORATION; and ECHO TRAIL HOLDINGS, LLC, a limited liability company, Plaintiffs, vs. NADA L. EDWARDS, an individual, GARY E. KOVALL, an individual, ROBERT A. ROSETTE, an individual, ROSETTE & ASSOCIATES PC, a professional corporation, MONTEAU & PEEBLES LLP, a partnership, FREDERICKS & PEEBLES, LLP, a partnership, FREDERICKS PEEBLES & MORGAN LLP, a partnership, and Does 1 through 100, Defendants.	Case No. 30-2009-00311045 (Assigned to the Hon. Gail A. Andler, Civil Complex Dept. CX101) **TRIAL BRIEF** **DATE: June 4, 2012** **TIME: 9:00 A.M.** **DEPT: CX101** **Complaint Filed: October 13, 2009** **1st Am. Complaint Filed: February 3, 2010**

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I. THE PARTIES AND THEIR REPRESENTATION

The plaintiffs are the Twenty-Nine Palms Band of Mission Indians of California, which wholly owns both Twenty-Nine Palms Enterprises Corporation (a casino located in Coachella Valley) and Echo Trail Holdings, LLC. The plaintiffs are hereafter referred to collectively as the "Tribe." The Tribe is represented by Gordon E. Bosserman and Brent Parker of Spolin Cohen Mainzer & Bosserman LLP.

Defendant Gary E. Kovall ("Kovall") is represented by Lewis Brisbois Bisgaard & Smith LLP. The Court has granted a stay of this action as against Gary Kovall, based on his assertion of his Fifth Amendment right against self-incrimination.

Defendants Robert A. Rosette, Rosette & Associates PC (collectively, "Rosette"), and Nada L. Edwards have all settled with the Tribe.

This Trial Brief is submitted by defendants Fredericks Peebles & Morgan LLP, formerly Fredericks & Peebles LLP, formerly Monteau & Peebles LLP ("FPM"). FPM is represented by James J. Banks, Brian M. Englund and Kelsey E. Papst of Banks & Watson.

II. INTRODUCTION

Defending against the Tribe's claims is akin to jousting with smoke. The Tribe originally brought what FPM thought was a run-of-the-mill professional negligence action. In its First Amended Complaint ("FAC"), the Tribe alleged that FPM should be held liable for certain decisions that were made by the Tribe's former general counsel, Gary Kovall, who at various times retained FPM to perform work on behalf of the Tribe. The allegations spanned various legal matters in which Kovall advised the Tribe, only some of which involved FPM, including: an investment in a business venture called Total Tire Recycling, LLC; the defense of a lawsuit referred to as the *Moskow* litigation; the purchase of a parcel of land located next to the Tribe's casino, referred to as 47 Acres; and a solar energy project called Emerald Solar. (See Ex. A, FAC, ¶¶ 20-27 (*Moskow*), ¶ 33 (47 Acres), ¶ 36 (Emerald Solar), and ¶¶ 79-84.)

The Tribe's "big ticket item" has always been 47 Acres. The Tribe claims that Kovall duped the Tribe into overpaying for the property by approximately $12 million, because his fiancée, Peggy Shambaugh, was the Tribe's real estate broker and stood to receive a large commission. The Tribe also claims that Kovall was in an illegal kick-back scheme with several of the Tribe's former advisors,

including Paul Bardos (the Tribe's construction consultant), David Alan Heslop (the Tribe's business development consultant) and Peggy Shambaugh.

Both 47 Acres and the kickback allegations were mentioned in the FAC. But what wasn't mentioned was the fact that the Tribe had already brought separate actions, one in Riverside County and at least one in San Bernardino, against Bardos, Heslop, and Shambaugh (and their respective entities) for these same damages.[1] Because of this, both Kovall and Edwards brought motions to coordinate this action with the Riverside action in 2010.

In response, the Tribe told this Court that: "the present case differs markedly from the [ ]Riverside action . . . because the 47 acres . . . constituted the unquestioned hallmark of that action (in contrast to this action, in which the 47 acres is but one of numerous transactions, and *affects only Kovall*) . . ."; and "As to kickbacks, *only Kovall is alleged to have received kickbacks*. The actual allegation in this action is that [FPM] and Rosette secretly split fees with Kovall. That is different from the kickbacks Bardos paid Heslop which he, in turn, split with Kovall after attempting to launder the funds through Shambaugh . . . ." (See Ex. B, Opposition to Kovall's Motion to Transfer, p. 8 fn. 3; Ex. E, Declaration of Gordon E. Bosserman in Support of Coordination Opposition, 7:12-16 (emphasis added).) Based on the Tribe's representations, the Court denied Kovall and Edwards' motions.

And so, the defendants proceeded to conduct extensive discovery on the Tribe's negligence causes of action. The parties attended dozens of depositions and exchanged over a hundred thousand pages of documents during 2010 and 2011. The discovery focused on what was alleged – that FPM was negligent in representing the Tribe in relation to TTR, *Moskow*, 47 Acres, and Emerald Solar, and that FPM was also vicariously liable for its "agent," Kovall.[2]

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[1] There are actually a few different actions brought against these defendants. Two of these cases are: *Twenty-Nine Palms Band of Mission Indians of California, et al. v. David Alan Heslop, et al.*, Riverside County Superior Court Case No. RIC10006101; and *Twenty-Nine Palms Enterprises Corp. v. Cadmus Construction Co., et al.*, San Bernardino County Superior Court Case No. CIVRS908132.

[2] During discovery, it became readily apparent that there was absolutely no agency relationship between FPM and Kovall. They maintained separate offices and phone numbers, sent correspondence through separate emails and on separate letterhead, and billed the Tribe separately, for their separate work. FPM did not receive a penny from Kovall for his work on behalf of the Tribe. Furthermore, Kovall had a pre-existing relationship with the Tribe as its general counsel. Kovall was always the one who requested that FPM (and other outside counsel) perform work for the Tribe. Every single Tribal witness has testified that they understood that Kovall was supervising FPM's actions; not a single Tribal witness testified that they understood FPM to be supervising Kovall's work for the Tribe.

But then, having had their entire case eviscerated during discovery, the Tribe switched its theory of the case completely. Since filing its opposition to FPM's motion for summary judgment in October 2011, the Tribe has become increasingly more emphatic that the real problem isn't FPM's representation of the Tribe on any specific legal matter, but that FPM engaged in a "kickback conspiracy" with Kovall, thus making it liable for everything the Tribe has claimed as damages: the 47 Acres purchase, the Bardos kickback scheme, the amounts the Tribe expended in defending against *Moskow* (including *other* attorney's legal fees), and all of the attorney's fees FPM charged the Tribe during its five years of representation, even including the fees it charged for its considerable financial work in 2004 and 2007 (which work has never been alleged to have fallen below the standard of care).

The doctrine of judicial estoppel prohibits just such behavior. Judicial estoppel was created so that litigants would be prevented from playing "fast and loose with the courts." Parties cannot be allowed to advance one position to the court, only to later advance an entirely inconsistent position when it becomes convenient. Further, the Tribe did not plead conspiracy in the FAC, so it may not now instruct the jury on that theory at trial.

Additionally, the Tribe has no evidence that FPM engaged in either negligence or a breach of fiduciary duty during its representation of the Tribe. The Tribe claims that FPM conspired with Kovall to squeeze legal fees out of the Tribe, in violation of the California Rules of Professional Conduct, rule 2-200. First, rule 2-200 does not prohibit fee sharing; it only requires that clients disclose the fee sharing agreement with their clients. The only civil remedy recognized for this alleged "breach" is that, should Kovall (the referring attorney) seek his portion of the fees under the agreement, he would be limited to quantum meruit recovery. (See *Huskinson & Brown, LLP v. Wolf* (2004) 32 Cal.4th 453, 458-459.)

Second, the Tribe has no evidence that Kovall and FPM's agreement caused the Tribe any harm. The Tribe has no expert who can testify that FPM committed any breach of the standard of care, other than failing to ensure the Tribe had given its consent to the agreement; but there is absolutely no evidence that the fee sharing agreement by itself caused the Tribe any damages. The Tribe has no expert who can testify that the fees FPM charged were unreasonable, and there is no evidence that FPM raised its legal fees as a result of the agreement. And while the Tribe claims that the fee sharing agreement

"tainted" the legal services FPM performed on behalf of the Tribe, the Tribe cannot point to any specific action that FPM took that fell below the standard of care. On the other hand, FPM's well-qualified expert will testify that the non-disclosure of the fee sharing agreement, on its own, does not constitute a breach of fiduciary duty, and several FPM attorneys will take the stand to defend the legal services they provided.

Third, the Tribe's claims are all time-barred. The 47 Acres transaction closed on November 9, 2007. FPM substituted out of the *Moskow* litigation on June 24, 2008. FPM mailed its final bill to the Tribe on September 30, 2008. But the Tribe filed its complaint more than a year later on October 13, 2009. Under Code of Civil Procedure, section 340.6, the Tribe's causes of action (assuming any exist) are barred by the statute of limitations.

III. ANALYSIS

A. Judicial Estoppel Bars the Tribe from Arguing Conspiracy at Trial.

The basic doctrine of judicial estoppel "prevents a party from asserting a position in a legal proceeding that is contrary to a position taken in the same or some earlier proceeding." (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181.) The doctrine is invoked in order to prevent a party from changing its position over the course of litigation when such positional changes have an adverse impact on the judicial process. (*Id.*) The purpose of judicial estoppel is to "protect the integrity of the judicial process" and prevent litigants from playing "fast and loose with the courts." (*Id.*, internal citations and quotation marks omitted.) "It seems patently wrong to allow a person to abuse the judicial process by first advocating one position, and later, if it becomes beneficial, to assert the opposite." (*Id.*, internal citation, formatting and quotation marks omitted.)

Unlike equitable estoppel, which focuses on the relationship between the parties, judicial estoppel focuses on the relationship between a party and the judicial system. (*Id.* at p. 183.) Thus, the elements of privity, reliance, and prejudice are not required. Rather, the doctrine applies when: (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position; (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud or mistake. (*Id.*)

For instance, in *International Billing Services v. Emigh* (2000) 84 Cal.App.4th 1175, the plaintiffs' complaint for breach of contract contained a request for attorney's fees based on a provision in the contract. When the plaintiff later attempted to deny that the provision was an attorney's fees clause, the court held he was judicially estopped from taking that position. (*Id.* at p. 1186.)

Here, the Tribe originally pursued one theory against FPM in both its pleadings and thoughout much of this action, namely, that Kovall was an *agent* of FPM, and that FPM is thus vicariously liable for his actions in relation to four different legal matters, including Total Tire Recycling, the *Moskow* litigation, the purchase of 47 Acres, and Emerald Solar. (See Ex. A, FAC at ¶ 80 ("[FPM] continued to represent the Tribe . . . until in or about July, 2008, and as alleged above, Kovall, *their agent*, continued to represent the Tribe until November 1, 2009." (emphasis added).) For instance, in the Tribe's verified responses to FPM's first set of special interrogatories, dated March 31, 2010, the Tribe referenced its agency theory *no less than five times*, either by expressly stating that Kovall was an agent of FPM or that he was "associated" with the firm, thereby making FPM vicariously liable for his allegedly negligent acts in relation to the four legal matters. (See Ex. C, Plaintiffs' Response to FPM's Special Interrogatories, Set One, 7:15-17 (Kovall was an "agent" of FPM when making the commutation agreements affecting the *Moskow* litigation), 8:9-12 (Kovall provided services relating to Total Tire Recycling "[d]uring the existence of the relationship" between FPM and Kovall), 9:8-14 & 19-21 (Kovall represented the Tribe in connection with the 47 Acres purchase "while he was still associated with" FPM), 11:6-11 (claiming FPM is liable for all matters for which the Tribe sought advice, including from those "associated with" FPM, such as Kovall), and 14:10-12 (FPM supplied services to the Tribe "either directly or through Kovall").)

The Tribe also opposed not one but two separate motions to bring this action in line with the Riverside actions brought against Bardos, Heslop and Shambaugh.[3] The Tribe successfully fended off both motions on the basis that its claims against its "financial advisors," particularly relating to the

[3] Kovall brought a motion to transfer the action to Riverside, which motion was heard on May 13, 2010; former defendant Nada Edwards later brought a motion to coordinate the action with the Riverside actions, which motion was heard on December 1, 2010.

47 Acres transaction, are wholly separate and distinct from its claims against the Tribe's attorneys. For instance, the Tribe made statements that:

> [T]he claims against each of the remaining defendants to this action [in Orange County] arise not out of the 47 acres transaction, but relate primarily to breaches of fiduciary duty and other negligent and improper representation of the Tribe in the Moskow action.

(Ex. B, Opposition to Motion to Transfer Action, 8:12-15.)

> [T]he present case differs markedly from the [ ]/Riverside action, . . . because the 47 acres . . . constituted the unquestioned hallmark of that action (*in contrast to this action, in which the 47 acres is but one of numerous transactions, and affects only Kovall*) . . . .

(*Id.* at p. 8, fn.3 (emphasis added).)

> [A]lthough plaintiffs' claims against Kovall, Edwards, and Peebles in the Orange County action are predicated to some extent on the purchase of the 47 acres, *the involvements of Edwards and Peebles were limited to discrete aspects of that transaction . . . [which] pale in complexity to the extensive allegations of kickbacks and other self-dealing that are the subject of the claims against Shambaugh and Heslop in the Riverside action, and involve little if any overlap in proof between the two actions.*

(Ex. D, Opposition to Motion for Permission to Submit Petition for Coordination to the Judicial Council, 9:23-10:7 (emphasis added).)

> [T]he Riverside County action involves much more than the claims pertaining to the 47 acres, including self-dealing by Heslop with respect to the "Total Tire" recycling transaction . . . and the receipt of "kickbacks" from Paul Bardos, a contractor recommended to the Tribe by Kovall and Heslop.

(*Id.* at p. 10:8-13.)

> Kovall, as the Plaintiffs' general counsel, was involved in all transactions in both actions. For example, he received kickbacks paid by Bardos to Heslop and in turn to him through Shambaugh and her company. The other attorneys, however, are not directly related to the bulk of the transactions in the Riverside County action, except vicariously through Kovall.

(Ex. E, Declaration of Gordon E. Bosserman in Support of Coordination Opposition, 6:23-27.)

> *As to kickbacks, only Kovall is alleged to have received kickbacks. The actual allegation in this action is that the Peebles firm and Rosette secretly split fees with Kovall. That is different from the kickbacks Bardos paid Heslop which he, in turn, split with Kovall* after attempting to launder

> the funds through Shambaugh and her company. The secret fee-splitting issue is something that is unique to the lawyer malpractice action.

(*Id.* at p. 7:12-16 (emphasis added).)

As can be seen in the two oppositions referenced above, the Tribe originally claimed that the attorney defendants had *nothing to do with the kickback scheme* alleged against Bardos, Heslop and Shambaugh in the Riverside actions, and that *the fee-splitting issue is a completely separate issue from the kickback issue*. The Tribe's counsel even made such statements *in a declaration made under penalty of perjury*. (See Ex. E.) The Tribe particularly distinguished the 47 Acres transaction, claiming that it "affects only Kovall" and that the Tribe's claims against its former counsel arise primarily out of the *Moskow* litigation. *Not once did the Tribe mention the word conspiracy* or claim that FPM was a co-conspirator with Kovall. Based on the Tribe's stated position, the Court denied both Kovall and Edwards' motions.

The Tribe's earlier position directly contradicts its current claims that *everyone*, Heslop, Bardos, Shambaugh, Kovall, FPM, and Rosette, were all in on the conspiracy. In its Pretrial Conference Statement, the Tribe now argues that Kovall and Heslop began the conspiracy with the Total Tire venture, and that FPM entered the conspiracy by virtue of reviewing certain documents related to Total Tire but never disclosing "the existence of the secret relationship." (Ex. F, Plaintiffs' Pretrial Conference Statement ("Pretrial Statement"), 3:21-4:15.) The Tribe then places the 47 Acres transaction and the Bardos/Heslop kickback scheme front and center in this conspiracy. For instance, the Tribe claims that FPM knew that Kovall was using his fiancée (Shambaugh) as the broker for the 47 Acres transaction. (*Id.* at pp. 6:1-7:1.) Most egregiously, the Tribe now claims that:

> Consistent with the intent of Kovall and the Peebles Defendants to profit from [] their dealings with the Tribe . . . Kovall exacted cash and in kind compensation from Paul P. Bardos and his construction companies for work they did for the Tribe on construction projects. . . . The kickback arrangement between Kovall and Bardos began while Kovall was associated with the Peebles Defendants and continued after the Rosette Defendants took over the legal representation of the Tribe.

(*Id.* at p. 7:5-21.) The Tribe goes on to claim damages arising out of both the 47 Acres transaction and the Bardos/Heslop/Shambaugh scheme *against FPM directly*. (*Id.* at p. 10:4-15.)

Finally, in its Trial Brief, the Tribe abandons *any* reference to the four legal matters in which FPM was originally alleged to have represented the Tribe, focusing solely on its "kickback conspiracy." The Tribe's entirely new theory is that had FPM simply told the Tribe at the beginning that its in-house counsel (Kovall) was seeking an "illegal" kick-backs, the Tribe would have fired Kovall and would never have done any business with FPM: "Instead, the lawyers kept quiet and lined their pockets at the expense of the Tribe to the tune of many millions of dollars.[4] Attorney Kovall entered into similar kick-back schemes with other attorneys and with other professionals he introduced to the Tribe . . ." including Shambaugh, Bardos and Heslop. (Ex. G, Plaintiffs' Trial Brief, 3:23-4:7.)

It is black letter law that an agent cannot conspire with its principal. (See *Everest Investors 8 v. Whitehall Real Estate Limited Partnership XI* (2002) 100 Cal.App.4th 1102, 1107 (under agent's immunity rule, there can be no liability for conspiracy as a matter of law); *Wise v. Southern Pacific* (1963) 223 Cal.App.2d 50, 72-73, overruled on other grounds by *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510.) Yet, the Tribe did not first argue conspiracy until October 20, 2011, almost *two years* after filing its initial complaint, when it filed its opposition to FPM's motion for summary judgment. At that point, the parties had already conducted significant discovery, including requests for production of documents, numerous form and special interrogatories, and 18 depositions. Discovery closed a mere two months later on December 23, 2011.

Allowing the Tribe to now present its belated conspiracy theory to the jury, particularly when it did not allow FPM adequate time to conduct discovery on the issue, would turn equity on its ear and significantly prejudice FPM's case. (See *Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 764-765 ("To the extent that plaintiffs sought to fasten individual liability on [the defendant], on a theory not previously pleaded against her, the potential prejudice to her from a significant increase in stakes is obvious.").) FPM relied on the Tribe's earlier pursuance of this agency theory while conducting discovery, and thus was not adequately prepared to begin defending against a conspiracy theory almost two years after the original complaint was filed. FPM would be considerably prejudiced by now having to defend against it at trial.

[4] The total amount of attorneys' fees *and expenses* FPM was paid by the Tribe barely exceeds $900,000. Of that, FPM paid Kovall approximately $169,000.

More to the point, *this* Court relied on the Tribe's prior position in denying those earlier motions. In order to protect the integrity of the judicial process, the Tribe should be estopped from switching positions mid-stream.

Finally, the Tribe is claiming the *same damages* in this action that it is seeking against the defendants in the Riverside action, including the amount it paid for 47 Acres above fair market value, and the amount it paid Bardos that was purportedly kicked back to Kovall. (Ex. F, Pretrial Statement, 9:22-10:15.) The Tribe is getting two bites at the same proverbial apple. Pursuing its conspiracy theory in both this action and in the Riverside action also presents an inherent risk of inconsistent judgments.

Because the Tribe pursued its theory of agency/vicarious liability throughout the beginning of this litigation and opposed any chance of combining this case with the Riverside action on the basis that the kickback scheme had nothing to do with FPM, the Tribe must be equitably estopped from now pursuing its "kickback conspiracy" theory against FPM at trial.

B. The Tribe Did Not Plead Conspiracy, so the Jury May Not be Instructed on That Claim.

To plead conspiracy as a basis for liability, "a plaintiff must allege that the defendant had knowledge of and agreed to both the objective and the course of action that resulted in the injury, that there was a wrongful act committed pursuant to that agreement, and that there was resulting damage." (*Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 823, citing *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47.)

The only allegation of conspiracy in the Tribe's FAC is the boilerplate statement that "On information and belief, Plaintiffs allege that the Defendants, and each of them, were the duly authorized and acting agents, employees, partners, joint venturers, co-conspirators and/or the alter ego of each of the other Defendants . . . ." (Ex. A, FAC at ¶ 9.)

Generalities and bare legal conclusions are insufficient to allege conspiracy. (See *State of Cal. ex rel. Metz v. CCC Info. Services, Inc.* (2007) 149 Cal.App.4th 402, 419.) The FAC does not allege that FPM either knew of or agreed to Kovall's purported plan to defraud the Tribe of legal or consulting fees. Indeed, the Tribe has never fully explained what the specific agreement between the defendants was. The vague and incorrect allegation that FPM "concealed" its fee sharing agreement with Kovall is also

insufficient to plead conspiracy. (See *ibid.* (mere allegation that defendants conspired to conceal the wrongful act was insufficient to show conspiracy).)

The jury may not be instructed on a matter not within the issues presented by the pleadings. (See *Miller v. Peters* (1951) 37 Cal.2d 89, 95.) Further, Code of Civil Procedure section 607a states that a party may only seek to instruct the jury on the law "as disclosed by the pleadings." Because plaintiffs have not pled conspiracy in the operative complaint, they will be unable to present this theory at trial.

C. The Tribe has No Evidence of Conspiracy.

To prove a conspiracy at trial, the Tribe must show that: (1) FPM had knowledge of and agreed to both the objective and the course of action that resulted in the injury, (2) there was a wrongful act committed pursuant to that agreement, and (3) there was resulting damage. (*Berg & Berg Enterprises*, 131 Cal.App.4th at p. 823, citing *Quelimane Co.*, 19 Cal.4th at p. 47.) Regarding the first element – while knowledge and intent may be inferred, "conspiracies cannot be established by suspicions. There must be some evidence. Mere association does not make a conspiracy." (*Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1582 (internal citation and quotation marks omitted); see also CACI No. 3600 (Spring 2011 Ed.) p. 935 ("Mere knowledge of a wrongful act without cooperation or an agreement to cooperate is insufficient to make [the defendant] responsible for the harm.").)

In addition to the above elements, the Tribe must tie its claim of conspiracy to an actual, independent cause of action. *There is no separate tort for civil conspiracy.* (*Kidron v. Movie Acquisition*, 40 Cal.App.4th at p. 1581; *Revert v. Hesse* (1920) 184 Cal. 295, 301; *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 845.)

The only causes of action the Tribe has remaining against either Kovall or FPM are negligence, breach of contract (which is derivative of their negligence claim), and breach of fiduciary duty. However, a person cannot conspire to commit a negligent act. (See *Koehler v. Pulvers* (S.D. Cal. 1985) 606 F.Supp. 164, 173, fn. 10 ("This court is unaware of California decisional law imposing liability for conspiring to commit negligence. The allegation of civil conspiracy appears inherently inconsistent with the allegation of an underlying act of negligence"); *Triplex Communications, Inc. v. Riley* (Tex. 1995) 900 S.W.2d 716, 720, fn. 2 ("Given the requirement of specific intent, parties cannot engage in a civil conspiracy to be negligent").) Thus, the only way the Tribe can introduce its conspiracy theory is to

attempt to prove that FPM and Kovall *agreed* to commit, *intended* to commit, and actually *did* commit, a breach of fiduciary duty that caused the Tribe actual damages.

The Tribe has absolutely no evidence of any agreement between Kovall and FPM (or Kovall and Bardos, or Kovall and anyone for that matter) to commit a "wrongful act." The Tribe has never even articulated what that purported agreement entailed, other than, apparently, to harm the Tribe. (See Ex. G, Plaintiffs' Trial Brief, 10:17-19 ("It goes without saying that [FPM], as attorneys, knew full well all along the harm they were doing, the harm that was being done by others, and above all, they knew it was wrong. They were attorneys!").) Such vague allegations consist of nothing more than rank speculation, and are utterly unsupported by the facts of this case.

The Independent Contractor "Of Counsel" Agreement between Kovall and FPM is not evidence of a conspiracy. There is no language in that agreement demonstrating FPM's intent to harm the Tribe. Rather, in paragraph 6, the agreement specifically required Kovall to get the Tribe's consent to the agreement, and John Peebles will testify that he believed Kovall had done so.

Plaintiffs also present no evidence that the fee-sharing agreement between Kovall and FPM actually did cause harm to the Tribe.[5] Kovall and FPM separately billed the Tribe for the work each did, and FPM never received any fees from Kovall for his work for the Tribe. Additionally, there is no evidence FPM raised its standard billing rates in order to provide a referral fee to Kovall; quite the opposite, FPM maintained its same fees for the Tribe as it did for all its other clients. Most importantly, the Tribe will present *zero expert testimony* that FPM did not earn the fees it billed the Tribe, or that its legal fees were unreasonable.

At most, FPM's failure to confirm that Kovall had received the Tribe's consent to the fee sharing arrangement was a technical violation of rule 2-200 of the California Rules of Professional Conduct.

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[5] It has been said that disgorgement of attorneys' fees *may* be an appropriate remedy for an attorney's breach of fiduciary duty. (*Slovensky v. Friedman* (2006) 142 Cal.App.4th 1535, citing *In re Fountain* (1977) 74 Cal.App.3d 715, 719 (requiring attorney to disgorge attorney's fees received for purposes of filing a criminal appeal, when attorney filed one that was late and inadequate, therefore forfeiting his client's appellate rights).) However, disgorgement is only a proper remedy where the attorney's purported wrongful act, such as concealment, has *independently caused* the client actual damage. (*Id.* at p. 1536; see also *Klemm v. Superior Court* (1977) 75 Cal.App.3d 893, 901 (attorney who fails to disclose a conflict of interest is civilly liable to the client "who suffers loss caused by lack of disclosure").) In order to receive forfeiture of attorneys' fees as a remedy, the plaintiff must also prove that the attorney's conduct was "sufficiently egregious" to require forfeiture of fees. (*Mardirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 278.)

But the act of sharing fees is neither unlawful nor unethical. (*Huskinson & Brown, LLP v. Wolf*, 32 Cal.4th at pp. 458-459 (rule 2-200 does not categorically prohibit attorneys from making or accepting referrals or agreeing to divide the labor on a client's case).) Indeed, rule 2-200 actually *allows* attorneys to share fees, provided that they comply with the conditions set forth in that rule. (*Huskinson & Brown, LLP v. Wolf*, 32 Cal.4th at p. 459.) The fact that FPM and Kovall allegedly did not comport with those requirements does not make their fee sharing "wrongful"; rather, it presents at most a potential ethical violation, which does not itself give rise to civil liability and damages. (See Cal. Rules Prof. Conduct, rule 1-100(A) ("Nothing in these rules shall be deemed to create, augment, diminish, or eliminate any substantive legal duty of lawyers or the non-disciplinary consequences of violating such a duty.").) In addition, there is no authority that a rule 2-200 violation would even constitute a breach of fiduciary duty on the part of the attorney to whom the case was referred (FPM): for instance, an attorney to whom the case was referred may be able to seek enforcement of a fee sharing agreement, because he "would be the one who did most or all of the work on the case, and reliance on the assurances of referring counsel (who necessarily has the original client relationship) might well be reasonable." (*Margolin v. Shemaria* (2000) 85 Cal.App.4th 891, 903, fn. 7.)

There is no smoking gun here. Out of over a hundred thousand pages of documents discovered, the Tribe has failed to produce one email, one letter, one scrap of testimony from which a jury could infer that FPM and Kovall "conspired" – that they both *agreed* to harm and *intended* to harm the Tribe in some specific way. The Tribe's cries of conspiracy ring hollow and will not be supported at trial.

D. The Statute of Limitations Bars the Tribe's Claims.

As will be addressed below, any claim that FPM is directly liable to the Tribe for harm arising out of FPM's representation of the Tribe in *Moskow* or 47 Acres is barred by the statute of limitations. To the extent the Tribe is otherwise seeking damages for FPM's "kickback conspiracy," that claim is also time-barred.

Code of Civil Procedure section 340.6, subdivision (a), provides that an action against an attorney for a wrongful act or omission shall be commenced within one year after the plaintiff discovers, or with reasonable diligence should have discovered, the facts constituting the attorney's wrongful act. The one-year statute is only tolled if the plaintiff has not suffered actual injury, if the plaintiff is under a

legal or physical disability, or if the attorney "continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred." (Code Civ. Proc., § 340.6, subd. (a)(1)-(4).)

The Tribe has previously argued during law and motion that section 340.6 does not apply to its claim for conspiracy, because of FPM's alleged fraud and concealment of the fee sharing agreement. But the Tribe did not plead fraud or concealment in its complaint. As explained above, the only cause of action to which the Tribe can tie its conspiracy claim is breach of fiduciary duty.

As with negligence, breach of fiduciary duty is also subject to the one-year statute of limitations. (*Stoll v. Superior Court* (1992) 9 Cal.App.4th 1362, 1368-1369.) If FPM and Kovall did conspire to breach their fiduciary duty by violating rule 2-200 (which FPM's expert will absolutely refute at trial), then the conspiracy ended at the time the last overt act in furtherance of the conspiracy transpired. It is undisputed that FPM mailed its final bill for legal fees on September 30, 2008. However, the Tribe filed its original complaint on October 13, 2009, more than one year later. The Tribe's claim is time-barred.

The Tribe has attempted to refute this argument by claiming that Kovall and FPM concealed the fee sharing agreement until 2009. However, concealment of a conspiracy is not enough to toll the statute of limitations. (See *State of Cal. ex rel. Metz v. CCC Info. Services, Inc.*, 149 Cal.App.4th at p. 419 (once the primary objective of the conspiracy has been attained, the statute of limitations period for the conspiracy begins to run at the same time as for the substantive offense itself). Thus, even if FPM had engaged in subsequent conduct related to the conspiracy, such as concealment, this did not constitute an overt act sufficient to recommence the statutory period. (*Id.*)

E. The Agency Paradox

The Tribe paradoxically claims that (1) FPM is vicariously liable for the allegedly wrongful acts of Kovall, because he was their "member" or "agent," and (2) FPM and Kovall conspired to harm the Tribe. (Ex. G, Plaintiffs' Trial Brief, pp. 7:13-11:26.)

It is black letter law that an agent cannot conspire with his principal. (See *Everest Investors 8 v. Whitehall Real Estate Limited Partnership XI*, 100 Cal.App.4th at p. 1107 (under agent's immunity rule, there can be no liability for conspiracy as a matter of law); *Wise v. Southern Pacific*, 223 Cal.App.2d at

pp. 72-73.) The Tribe's two theories for making FPM vicariously liable for Kovall's acts are inherently inconsistent, and instructing the jury on both theories could very possibly lead to a nonsensical verdict.

The Tribe also paradoxically claims that Kovall was FPM's agent in the same breath that it claims they violated CRPC rule 2-200 together. (See Ex. G, Plaintiffs' Trial Brief, pp. 10:21-11:26.) That simply cannot be the case. Rule 2-200 specifically provides that it is inapplicable when a member of the Bar shares fees with a partner, shareholder, or "associate." When an outside lawyer functions "on a particular matter essentially on the same basis as an employee of the law office," the outside lawyer is an "associate" for purposes of rule 2-200. (*Sims v. Charness* (2001) 86 Cal.App.4th 884, 886.) If, as the Tribe claims, Kovall was acting as a "member" and "agent" of FPM when he performed work on behalf of the Tribe, then *Kovall and FPM cannot have violated rule 2-200* by agreeing to share fees.

The Tribe simply cannot have it both ways. If Kovall and FPM conspired to harm the Tribe by virtue of their non-disclosure of their fee sharing agreement, then Kovall *cannot* have been acting as FPM's agent. The Tribe should be forced to choose between these two theories before proceeding to trial, or risk confusing the jury and leading them into an inconsistent verdict, which will not be allowed to stand.

F. The Court Cannot Hold FPM Vicariously Liable for Kovall's Alleged Wrongful Acts, because the Action Against Him is Stayed.

The Court cannot try vicarious liability claims against FPM based on the allegedly tortious conduct of Kovall, because the action against Kovall is stayed. There is no legal basis for proceeding to trial against an alleged principal where the action against the agent is stayed. Such a procedure would expose FPM to a second trial and, inherently, a risk of inconsistent verdicts, because the direct liability claims against Kovall will have to be tried at a later date.

A finding of vicarious liability is not based on fact. Rather, liability is imposed for purposes of public policy – "a deliberate allocation of a risk" – regardless of the principal's control or fault. (*Lathrop v. Healthcare Partners Medical Group* (2004) 114 Cal.App.4th 1412, 1423. "The employer's liability is wholly derived from the liability of the employee. The employer cannot be held vicariously liable unless the employee is found responsible." (*Id.*)

> When a party is injured by a tortfeasor and seeks to affix liability on the tortfeasor's employer, the injured party ordinarily must demonstrate either (1) the employer violated a duty of care it owed to the injured party and this negligence was a proximate cause of the resulting injury (the *direct* liability theory), or (2) the tortfeasor-employee was liable for committing the tortious conduct that caused the injury while acting within the course and scope of his or her employment (the *vicarious* liability theory).

(*deVillers v. County of San Diego* (2007) 156 Cal.App.4th 238, 247 (emphasis added).)

Accordingly, if the agent is determined to be not liable, the alleged principal is not liable, as a matter of law. It is a "well-settled rule that where recovery of damages is sought against a principal and an agent, and the negligence of the agent is the cause of the injury, a verdict releasing the agent from liability releases the principal." (*Lehmuth v. Long Beach Unified Sch. Dist.* (1960) 53 Cal.2d 544, 550.) Similarly, where an alleged tortfeasor has been exonerated, no claim can be brought against another defendant for allegedly conspiring with the first defendant. (*Richard B. Levine, Inc. v. Higashi* (2005) 131 Cal.App.4th 566, 578.)

FPM has found no authority, either in state or federal law, which would support trying an action against the principal where there is a stay in effect as to the agent. Not surprisingly, this issue does not come up, because it simply makes no sense to proceed in this manner.

Even if the Court could proceed to trial against FPM on the theory of vicarious liability, no judgment could be entered against FPM. Any judgment that disposed of less than all of the claims against FPM would violate the one judgment rule. (See *Jach v. Edson* (1967) 255 Cal.App.2d 96, 99; *Pastor v. Younis* (1965) 238 Cal.App.2d 259, 264 ("there can be but one judgment in an action as between the same parties and that is a judgment which determines all matters in controversy between them . . .").) Since the liability of the principal cannot exceed the liability of the agent, entry of any judgment against FPM would have to wait until the case against Kovall is tried.

The Court's inability to try the Tribe's vicarious liability claims is wholly of the Tribe's making. The Tribe has not sought to bifurcate its claims between FPM and Kovall, and the time for doing so has passed. FPM simply cannot be held vicariously liable for any harm that Kovall directly caused the Tribe, be it for his alleged kickback scheme with Bardos, Helsop, and Shambaugh or his alleged inflation of the purchase price of 47 Acres. FPM had no involvement in those matters, and cannot be held vicariously liable for those damages at trial.

G. FPM is Not Directly Liable to the Tribe for any Damages Arising out of the *Moskow* Litigation or 47 Acres Transaction.

Based on the Tribe's most recent Trial Brief, it appears the Tribe is no longer claiming that FPM was negligent in performing legal services for the Tribe in relation to either *Moskow* or 47 Acres; indeed, neither of these matters are even so much as mentioned.[6] (See Ex. G.) The Trial Brief relies solely on its claim that FPM engaged in a "kickback conspiracy" with Kovall (Ex. G, Plaintiffs' Trial Brief at 2:9-3:6), which somehow nebulously caused the Tribe harm. (See *id.* at p. 3:10-22 (supposedly, FPM "kept the kick-back scheme secret from their client . . . [and] prohibited the Tribe from ever learning that neither its in-house lawyer nor [FPM] were loyal to the Tribe. . . . This resulted in poor, incompetent and ultimately damaging legal services being provided to the Tribe in the areas of transactional law, litigation, and insurance law, to name a few. . . . The more legal work, the more money for the kickbacks, leading, as these things do, to damages to the Tribe in a variety of areas.").) Nevertheless, anticipating that the Tribe's original claims for these two actions will rear their heads at trial, FPM will address each below.

1. The *Moskow* Litigation

In August 2003, prior to FPM's engagement with the Tribe, the Tribe sold a house to Dr. and Mrs. Moskow. The sales agreement, which was signed by Dean Mike as Chairman of the Tribe, contained a provision that all disputes relating to the transaction would be resolved by arbitration. In June 2004, the Moskows filed a construction defect case against the Tribe, Dean Mike, the Tribe's contractor, and others in relation to the sale of the house (the "*Moskow* litigation").

Kovall contacted FPM to seek its assistance with *Moskow* in August 2004; FPM was asked to assist with researching the jurisdiction and sovereign immunity issues, while Edwards was asked to tender the defense of the case and take the lead in litigation. Pursuant to Kovall's letter, Kovall was to coordinate the defense efforts. FPM and Edwards thereafter filed a motion to quash the original

[6] The Tribe has agreed that it will not seek any damages arising out of the Total Tire venture. As for Emerald Solar, the only damages it is now seeking in relation to that project are the attorneys' fees FPM expended in researching the project, which, like its terribly recent claim for FPM's attorneys' fees for the 2004 and 2007 financing transactions, are subsumed by the Tribe's breach of fiduciary duty claim.

complaint in September 2004; in response, the Moskows withdrew service of the complaint as against the Tribe alone (the litigation continued to proceed against the other defendants).

The Moskows later filed a Petition to Compel Arbitration in 2006, to which FPM again filed a motion to quash on the basis of sovereign immunity. The motion was ultimately unsuccessful, as this Court found that the Tribe had waived sovereign immunity by virtue of the arbitration clause contained in the sale agreement. FPM's Petition for Writ of Mandate contesting this Court's denial was similarly denied.

Kovall discussed the motion to quash with Dean Mike around the time of the ruling, including the Court's conclusion that sovereign immunity had been waived. He also informed the Council that the lawsuit (as opposed to arbitration) was going forward during a Tribal Council meeting in late 2006. All counsel involved agreed that arbitration left the Tribe with too much risk, as the Tribe would be the only defendant in the matter; joining the litigation meant that the Tribe could join or cross-claim against other defendants, who would share in any settlement or trial judgment. (In fact, this is what actually occurred in 2009.) Thus, following the denial of the motion to quash, FPM filed a stipulation waiving arbitration in 2007.

FPM went on to retain an expert in construction defect, Exponent, to conduct destructive testing on the Moskow house in the second half of 2007. The Tribe has claimed that FPM (and Edwards and Rosette) were negligent in retaining Paul Bardos as an expert in relation to the *Moskow* litigation, and in not retaining other experts with sufficient time to prepare for trial. However, FPM did not retain Paul Bardos to conduct destructive testing; rather Kovall and the Tribe asked Bardos to assist Edwards as a consultant. Trial was later continued to June 2009.

Meanwhile, pursuant to Kovall's specific request, Edwards tendered the defense of *Moskow* to the contractor's insurance carriers, but the contractor had left the Tribe off of his insurance policy, and the tender was denied. Kovall and other employees of the Tribe informed Edwards that the Tribe had no applicable insurance coverage, and that the Tribe's general liability insurance policy through Hudson Insurance would not cover the *Moskow* claim.

The Tribe's former CFO, Rich Williamson, subsequently advised the Tribe to commute its Hudson insurance policies for the years 2003-2005, meaning that the Tribe would waive any claim

under those policies in exchange for a partial refund of premiums. Neither FPM nor Edwards were informed of this decision.

FPM substituted out of the *Moskow* action on June 24, 2008. Edwards stayed on as the Tribe's counsel, and was joined by defendant Rosette & Associates as co-counsel. Rosette & Associates thereafter filed an unsuccessful motion for summary judgment, at which point the Tribe's current general counsel, Sheppard Mullin, stepped in.[7] Sheppard Mullin discovered the Hudson insurance policies and negotiated a settlement with both Hudson and the Moskows in 2009.

The Tribe now alleges that FPM was negligent in relation to the motion to quash, the decision to arbitrate, the retention of experts, and in failing to tender the defense of *Moskow* to Hudson.[8]

a. FPM did not breach the standard of care.

The Tribe cannot prove that FPM breached the standard of care owed in *Moskow*. It has no expert testimony to do so. At deposition, Kurt C. Peterson (the Tribe's litigation expert) testified that the fee sharing agreement between FPM and Kovall *might* have had an effect on how efficiently FPM conducted its legal work in *Moskow*. Such testimony is inherently speculative and conjectural. Peterson did not actually review the underlying *Moskow* file. Rather, he repeatedly testified that it was his understanding, based on the few depositions he read, that there were issues with the litigation, such as the decision to waive arbitration or the way the motion for summary judgment was drafted. Peterson would then go on to state that if there were issues with the litigation, then they were likely to have been impacted by the fee sharing agreement.

But an expert's opinion that something *could* be true if certain assumed facts are true does not assist the jury. (*Jennings v. Palomar Pomorado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1117.) An expert must have reasonably based his opinion on reliable matter, not just on hearsay but on a thorough review of the facts of the case. Peterson's opinions are both speculative and unreliable – it is not enough to say that an attorney's legal work "could" have been below the standard of care, based on

[7] Kovall had resigned as the Tribe's general counsel in or about November 2008.

[8] The Tribe also alleges there was a conflict of interest between Dean Mike and the Tribe, although the Tribe expressly agreed to indemnify Dean Mike in 2008. The tribe presents no reliable expert testimony as to what the conflict was.

what he's heard about the case. He must opine that the work actually was below the standard of care. Peterson has not done so.

Separately, there is no evidence that FPM was negligent in bringing its motion to quash the Petition to Compel Arbitration. Dean Mike signed the sale agreement and initialed the arbitration clause, and this very Court decided that motion back in 2006.

As to the decision to arbitrate, that was a procedural call, one that is always left to the better judgment of the attorney. An attorney engaged in litigation is granted latitude in choosing among legitimate but competing considerations, and is not liable for an informed tactical choice within the range of reasonable competence. So long as the attorney acts reasonably in choosing between alternative tactical strategies, the attorney is not liable simply because another strategy may have resulted in a better result. (See *Kirsch v. Duryea* (1978) 21 Cal.3d 303, 309.) FPM, Edwards and Kovall had every reason to believe litigation was the better way to go, as this allowed the Tribe in the end to share in the global settlement with the Moskows.

In regards to the retention of experts, FPM did retain a construction expert (Exponent, not Bardos), in 2007, well before the trial was set to begin. FPM substituted out in June 2008, a year before the new trial date in 2009, at which point Edwards and Rosette took over any duties relating to the retention of experts.

Finally, there is no evidence that FPM was ever asked to review potential insurance coverage for the Tribe or to tender the defense of *Moskow* to any insurer. Edwards was delegated the task of tendering the defense, and she was informed that, to the extent there was any coverage, it would be provided by the contractor's insurer. Kovall was the only attorney in a position to know what insurance coverage was available. As for the commutations of the 2003-2005 Hudson policies, it was the Tribe's CFO, Rich Williamson, who recommended to the Tribal Council that they commute the policies.

It is not even certain that the policies provided for a defense of the *Moskow* litigation during the time FPM was involved in the case. The Tribe lacks any expert on insurance coverage who can prove that the insurance policies would have covered *Moskow*, had the Tribe tendered the defense back in 2004. The jury certainly is not qualified to interpret the policy language on its own and make a finding

that Hudson would have covered *Moskow*. The Tribe will simply be unable to prove that FPM was negligent at trial.

b. *Moskow* is barred by the statute of limitations.

A claim for professional negligence must be brought within one year of the discovery of the facts underlying the client's claim. (Code Civ. Proc., § 340.6.) This one-year period also applies to any additional "wrongful act or omission" other than fraud, including breach of contract and breach of fiduciary duty. (See *Southland Mechanical Constructors Corp. v. Nixen* (1981) 119 Cal.App.3d 417, 429; *Stoll v. Superior Court*, 9 Cal.App.4th at 1369.)

FPM ceased representing the Tribe in *Moskow* on June 24, 2008, when the substitution of attorney was filed. Thus, the Tribe's claims against FPM in relation to *Moskow* must have been filed by June 23, 2009 to be timely. As the original complaint was not filed until October 13, 2009, the Tribe's claims relating to FPM's handling of the *Moskow* litigation are barred by section 340.6.

FPM anticipates that the Tribe will argue that the statute of limitations was tolled until September 2008 (or possibly later) when FPM ceased representing the Tribe on other matters. However, section 340.6 is not tolled unless the attorney continues to represent the client regarding a "specific subject matter." (Code Civ. Proc., § 340.6, subd. (a)(2); *Truong v. Glasser* (2009) 181 Cal.App.4th 102, 116-117; *Beal Bank, SSB v. Arter & Hadden, LLP* (2007) 42 Cal.4th 503, 514, fn. 8.)

The discovery rule also does not apply here. The Tribe was informed of both the denial of the motion to quash and its counsels' decision to litigate (instead of arbitrate) prior to the time of withdrawal. (See *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 751 ("limitations period commences when the plaintiff actually or constructively discovers the facts of the wrongful act or omission"); *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1111.) At the very least, the Tribe had constructive knowledge of the loss of its "right" to arbitrate and to claim sovereign immunity, because, even after Kovall informed the Tribal Council that these were issues in the case, the lawsuit continued to proceed. The Tribe also had other counsel representing it after the date of withdrawal who most certainly had constructive, if not actual, knowledge of these facts.

c. The Tribe has no damages.

The *Moskow* case was settled for a total payment of $1.3 million. Of that amount, $550,000 was paid by the Tribe and its insurer, and $750,000 was paid by other contractor parties. With respect to the $550,000, half was paid by the Tribe and half was paid by the insurer. Additionally, Sheppard Mullin negotiated a settlement of claims by the Tribe against the insurer for $500,000, on top of the $131,056.21 they had already paid for attorneys' fees. These amounts covered effectively all of Sheppard Mullin's fees.

Even if the defense should have been tendered to Hudson earlier, any damages should be limited to pre-tender attorneys' fees and costs from the filing of the complaint to when FPM substituted out in June 2008. Any pre-tender fees will additionally be offset by the approximately $200,000 received by the Tribe for the commutation of its 2003-2005 policies. Finally, the Tribe's settlements with both Edwards and Rosette (which total $1.7 million) will entirely offset against whatever remaining damages there are for *Moskow*. In other words, even if the Tribe proves liability against FPM for damages arising out of the *Moskow* litigation, it will be able to recover $0.

2. 47 Acres

In November 2007, the Tribe purchased 47 acres of land located adjacent to its existing reservation ("47 Acres") through its wholly-owned legal entity, Echo Trail Holdings, for $31.7 million. The Tribe now claims that it overpaid for the property in an amount exceeding $10 million.

Prior to purchasing 47 Acres, David Alan Heslop, the Tribe's manager of Echo Trail Holdings, obtained an appraisal that valued the property at $19.2 million. The seller, Dillon Road Associates, also obtained an appraisal, which valued the property at $33.5 million or, as an assemblage with the Tribe's casino, at over $37 million. The Tribal Council instructed Heslop to analyze and compare the two appraisals at a Tribal Council meeting on August 1, 2007 and arrive at a suggested price. His suggestion was to offer $30 million. At the next meeting, Kovall advised the Tribal Council to offer $29 million. This number in turn was based on a suggestion by Tribal Chairman Darrell Mike (Dean Mike's nephew), who had recommended the $29 million number based on the Tribe and casino's name (Spotlight 29 Casino).

Kovall went on to negotiate the purchase of 47 Acres on behalf of the Tribe. The Tribe voted unanimously to purchase the property on September 19, 2007 for $31.7 million. The seller testified he would not have sold for less. The Tribe and seller then executed an Option Agreement for the negotiated price of $31.7 million.

The members of the Tribal Council were aware of the lower appraisal value prior to voting to purchase 47 Acres. Darrell Mike was informed of the $19.2 million appraisal value well before the Tribe voted to purchase the land. Though he did not have a vote on the Tribal Council as Chairman, he remained silent about the price that Kovall had negotiated, despite his belief that the Tribe was overpaying for the property. Indeed, Darrell Mike testified that he did not raise the issue of the purchase price at the September 19, 2007 meeting, because he did not believe it would have affected the Tribal Council's vote. The Tribe (particularly Dean Mike) had been interested in purchasing 47 Acres for over 15 years and had made at least one prior offer to purchase the parcel.

Dean Mike, now a member of the Tribal Council, was also aware that Heslop had received an appraisal prior to the purchase, though he chose not to review it. Dineen Mike, cousin to Darrell Mike and the Tribal Council's Secretary, was similarly aware that the Tribe had asked for an appraisal, but she deferred to others on how much the Tribe should pay for the land.

Keith Shibou, who was the Tribe's trusted CPA and advisor, has testified that he had a discussion with Darrell Mike before the purchase, wherein Darrell Mike told Shibou about the two appraisals. Shibou cautioned against paying the higher appraisal value without further investigation. He advised Darrell Mike to seek an outside expert opinion as to the value of 47 Acres. Shibou was also concerned about Kovall's advice regarding the value of the property, because of his prior bad investment advice in relation to a separate transaction, Total Tire Recycling, in the early 2000's. Despite Shibou's advice, Darrell Mike never sought an outside opinion. Apparently, the Tribe was willing to "overpay" for the property, as it had unique value to the Tribe for the purpose of providing better access to casino property; the Tribe also wanted to control any development on the land adjacent to the casino.

The Tribe has admitted, through its various Council members, that it never asked FPM for advice about the what purchase price to offer for 47 Acres. It has also admitted that it never asked FPM to evaluate the value of 47 Acres or to review the appraisals. The Tribe did not send or receive any

writings or communications from FPM regarding 47 Acres. Nor did Kovall ever say that FPM was assisting him in negotiating or evaluating the purchase price. The Tribe has similarly admitted that it never received any invoices showing that FPM had worked on the purchase of 47 Acres. Nor did FPM provide any advice about the purchase or value of 47 Acres. Finally, the Tribe has admitted that FPM never attended any Tribal Council meetings during which the members discussed 47 Acres.

These facts should not be surprising because the Tribe had a different lawyer, Michael Rover, representing them in the purchase of the 47 Acres. Likewise we should not be surprised that Mr. Rover, the Tribe's lawyer, has never heard of FPM, did not interact with FPM in that transaction, never heard FPM's name mentioned in any capacity in that transaction and was otherwise unaware of any alleged involvement by FPM in the purchase of the 47 Acres.

Kovall did ask FPM (particularly Fred Assam) to negotiate a $120 million "secured credit facility" (loan) with National City Bank in August 2007, to be used for the Tribe's long-term development projects; FPM was informed that one of the many possible uses of proceeds for the loan included the purchase of 47 Acres, assuming the Tribe exercised its option. The loan was finalized on October 19, 2007. But FPM did not conduct any work related to evaluating the 47 Acres purchase or its value, and was not asked to do so. Rather, the Tribe retained Michael Rover as its legal counsel to help close the transaction, and to conduct due diligence prior to the time that escrow closed on November 9, 2007.

To close the transaction, the Tribe used Peggy Shambaugh as its real estate broker who, through her employer Windermere Real Estate, received a little under $1 million as a commission for the sale. The Tribe alleges that Kovall and Shambaugh were in a romantic relationship at the time of purchase, and that Kovall therefore stood to profit from the transaction. It also alleges that FPM should have discovered and disclosed Kovall's relationship with Shambaugh. However, FPM was not aware that Shambaugh had any relationship to Kovall or the Tribe, or any role in the 47 Acres transaction. John Peebles and Michael Robinson had attended a dinner *two years prior to the purchase* wherein Kovall introduced his date, Peggy; however, neither Peebles nor Robinson was involved in any way with the 47 Acres purchase, and Fred Assam had absolutely no knowledge of who Peggy Shambaugh was.

There is also no evidence that the Tribe would have voted differently had it known of the relationship. Dean Mike has testified that he does not know how the Tribal Council would have voted had they known of the relationship between Shambaugh and Kovall. Another Tribal member, Michelle Mike, has even testified that it made no difference to her who Kovall was dating, and that it would not have impacted her vote. FPM believes that it owed no duties to the Tribe in relation to the 47 Acres purchase, that it did not breach any standard of care, that FPM could not have caused any damage to the Tribe in relation to 47 Acres, and that all causes of action arising out of 47 Acres are barred by the statute of limitations. The Tribe has presented no expert testimony that either Kovall or FPM breached the standard of care in relation to 47 Acres.

a. FPM did not owe any duties to the Tribe regarding the 47 Acres purchase.

Duty is a question of law for the court to decide. (*Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 397.) Where there is no attorney-client relationship regarding "a particular transaction," the attorney has no duties related to that transaction. (*Brandlin v. Belcher* (1977) 67 Cal.App.3d 997, 1001.)

FPM owed no duties to advise the Tribe regarding its decision to purchase 47 Acres for $31.7 million, because FPM never agreed to advise the Tribe about that purchase. FPM did provide some tangentially-related financial work for the Tribe by procuring the loan that was to be *partially* used to fund the transaction, but FPM was in no way involved in negotiating the actual purchase of the property; that was done by Kovall. If anyone had a duty to advise the Tribe about how much to pay for 47 Acres, it was Heslop, because he was the manager of Echo Trail. But placing a duty on a transactional attorney like Fred Assam to investigate the wisdom of each stated purpose for which a financing package is intended would stretch that attorney's duties much too far. Plaintiffs have no expert who will so testify.

What little legal work FPM conducted on the sovereign immunity waiver in the option agreement for the acquisition of the 47 Acres was done *after* the Tribal Council had already authorized the purchase for $31.7 million, and was unrelated to the negotiation of the purchase price anyway. FPM certainly did not take any action that indicated a "conscious decision" to undertake an attorney-client relationship with the Tribe regarding the amount of the 47 Acres purchase; the Tribe's unilateral,

hindsight claim that FPM had such a relationship does not create such a duty. For this reason alone, the Tribe's claims arising out of 47 Acres are meritless.

b. FPM was not an independent cause of any damages to the Tribe regarding the 47 Acres purchase.

Even if FPM owed any duties to the Tribe to advise it as to the wisdom of the 47 Acres purchase, FPM's "failure" to discover and warn the Tribe about the Kovall/Shambaugh relationship did not cause the Tribe any damages, because it was not an independent cause of the Tribe's alleged harm. In *Viner v. Sweet* (2003) 30 Cal.4th 1232, the California Supreme Court held that in a "transactional malpractice action," the plaintiff must show that but for the alleged negligence, the harm would not have occurred, i.e. that the plaintiff would have received a better deal or would not have gone through with the transaction. (*Id.* at pp. 1239, 1240-1241.) The purpose of this requirement "is to safeguard against speculative and conjectural claims." (*Id.* at p. 1241.) For, as the Court noted, when a business transaction "goes awry," disappointed principals frequently target the attorney who arranged the deal:

> It is far too easy to make the legal advisor a scapegoat for a variety of business misjudgments unless the courts pay close attention to the cause in fact element, and deny recovery where the unfavorable outcome was likely to occur anyway, *the client already knew the problems with the deal*, or where the client's own misconduct or misjudgment caused the problems.

(*Id.* at p. 1241 (emphasis added, citations omitted).) The Court also explained that "'concurrent independent causes' should not be confused with 'concurrent causes.'" (*Id.* at p. 1240 fn. 3.)

Here, it is undisputed that Tribal Chairman Darrell Mike believed there was a "problem with the deal" – he had seen the $19.2 million appraisal and believed the Tribe was overpaying for 47 Acres, but said nothing to the Tribal Council. Darrell Mike was even the one who suggested to Kovall that he offer $29 million. The Tribal Council itself chose to rely on Kovall and Heslop to work out the purchase price after it had been advised by Shibou that their investment advice should be confirmed. That the Tribal Council chose to sit in the background and let Kovall and Heslop make their business decision is not FPM's fault, particularly when no one from the Tribe asked for FPM's advice.

There is no evidence that the Tribe would have voted differently even had it learned of the Kovall/Shambaugh relationship. The Tribe had been deeply interested in purchasing the property for 15

years. Michelle Mike actually stated under oath that it would not have affected her vote. For the Tribe to now complain that it *might* have voted differently had someone at FPM warned them that Kovall was in a romantic relationship with their real estate agent is nothing more than pure speculation and conjecture, precisely the kind *Viner* warns against. (See also *Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037, 1048 (damages in a professional malpractice action cannot be based on "sheer speculation or surmise").)

Finally, the Tribe has no evidence it suffered any harm by purchasing 47 Acres at the stated price. It still owns the land. There is nothing (at least externally) prohibiting the Tribe from developing the land as it intended back in 2007. For all these reasons, the Tribe will be unable to establish that FPM's alleged omissions actually, independently caused the Tribe damage.

c. The statute of limitations has run on 47 Acres.

Both Keith Shibou and Darrell Mike have now testified as to their conversation regarding the purchase price for 47 Acres in 2007. This evidence, in addition to breaking the chain of causation, firmly establishes when the clock started ticking on the statute of limitations. Though the Tribe has alleged that it did not discover Kovall's wrongful acts until sometime in 2009 or 2010, Shibou actually warned Chairman Darrell Mike about the purchase and advised him to get other expert advice given Kovall's prior bad advice in relation to Total Tire. The Tribe was thus put on notice that it was potentially overpaying for 47 Acres as early as mid-2007. Neither Kovall nor FPM's attorney-client relationship with the Tribe in regards to the 47 Acres purchase went beyond the time of the purchase in November 2007. Therefore, the Tribe should have brought its claim no later than the end of 2008, and any cause of action arising out of 47 Acres is now barred by section 340.6.

H. There is No Evidence that FPM Acted with Fraud, Malice or Oppression; the Claim for Punitive Damages is Meritless.

To state a claim for punitive damages, the plaintiff must demonstrate "by clear and convincing evidence" that the defendant acted with oppression, fraud or malice. (Civ. Code, § 3294.) Punitive damages are not appropriate unless the defendant's acts are "reprehensible, fraudulent, or in blatant violation of law or policy." (*American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1051.)

None of the evidence, as laid out above, demonstrates clearly or convincingly that FPM engaged in despicable, reprehensible, malicious, or fraudulent conduct towards the Tribe to warrant punitive damages. The Tribe repeatedly makes allegations that FPM had some sort of obligation to seek out and discover what Kovall was doing as the "man behind the curtain," so to speak. But there is no evidence that FPM was aware of Kovall's alleged undisclosed interests in 47 Acres, or that it was asked to investigate those matters. There is also no evidence that FPM purposefully erred in defending the *Moskow* litigation. Nor does the fee-sharing arrangement with Kovall evidence that FPM acted with a willful intent to do harm. (Cf. *id.* at pp. 1049-1054 (attorney's conflict of interest in serving as a witness for an adverse party may have been in conscious disregard of his client's rights, but it was not "despicable").) Nothing in this case supports a finding that FPM acted in any way contrary to the rights of its clients, let alone with malice.

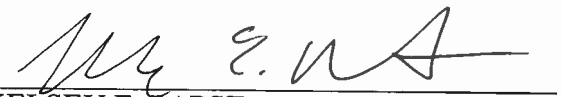
IV. CONCLUSION

Like the wind shifting through the meadow, the Tribe's ephemeral cries of "foul" contain no substance. At most, the Tribe can point to one, minor, technical violation of the Rules of Professional Conduct, which FPM has never attempted to refute. But the Tribe lacks any evidence that FPM's representation of the Tribe fell below the standard of care; it lacks any evidence that FPM ever overcharged the Tribe for the very real and substantial legal work it performed; and it lacks any evidence that Kovall ever worked as FPM's "agent." Realizing its deficiencies, the Tribe now makes one last ditch effort to create something out of nothing; but FPM is certain that the Tribe's claims will be unable to withstand a motion for directed verdict. In any event, FPM believes that a jury will see the Tribe's claims for what they truly are – much ado about nothing.

DATED: June 1, 2012

Respectfully submitted,

BANKS & WATSON

By: 

KELSEY E. PAPST
Attorneys for Defendants,
MONTEAU & PEEBLES LLP, FREDERICKS & PEEBLES LLP, and FREDERICKS PEEBLES & MORGAN LLP

EXHIBIT A

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TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA, TWENTY-NINE PALMS ENTERPRISES CORPORATION, and, ECHO TRAIL HOLDINGS, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

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TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA; TWENTY-NINE PALMS ENTERPRISES CORPORATION; and ECHO TRAIL HOLDINGS, LLC, a limited liability company,

Plaintiffs,

vs.

NADA L. EDWARDS, an individual, GARY E. KOVALL, an individual, ROBERT A. ROSETTE, an individual, ROSETTE & ASSOCIATES PC, a professional corporation, MONTEAU & PEEBLES LLP, a partnership, FREDERICKS & PEEBLES, LLP, a partnership, FREDERICKS PEEBLES & MORGAN LLP, a partnership, and Does 1 through 100,

Defendants.

Case No. 30-2009 00311045
Honorable David C. Velasquez

FIRST AMENDED COMPLAINT FOR:

(1) PROFESSIONAL NEGLIGENCE;
(2) BREACH OF CONTRACT;
(3) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
(4) BREACH OF FIDUCIARY DUTY;
(5) PROFESSIONAL NEGLIGENCE;
(6) BREACH OF CONTRACT;
(7) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
(8) BREACH OF FIDUCIARY DUTY;
(9) PROFESSIONAL NEGLIGENCE;
(10) BREACH OF CONTRACT;
(11) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
(12) BREACH OF FIDUCIARY DUTY;
(13) PROFESSIONAL NEGLIGENCE;
(14) BREACH OF CONTRACT;
(15) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; and,
(16) FIDUCIARY DUTY

Date Action Filed: October 13, 2009
Discovery Cutoff: None
Motion Cutoff: None
Trial Date: None

Plaintiffs Twenty-Nine Palms Band of Mission Indians of California, Twenty-Nine Palms Enterprises Corporation, and Echo Trail Holdings, LLC (sometimes collectively referred to herein as "Plaintiffs"), allege as follows:

GENERAL ALLEGATIONS

1. At all times relevant to the events alleged in this action, Plaintiff Twenty-Nine Palms Band of Mission Indians of California was and is a Sovereign Native American Nation duly recognized by the government of the United States of America. At all times relevant to the events alleged in this action, Plaintiff Twenty-Nine Palms Enterprises Corporation was and is a federally chartered corporation duly organized and existing under the laws of the government of the United States of America, and was and is wholly owned by Plaintiff Twenty-Nine Palms Band of Mission Indians of California. Together, these two entities are sometimes hereinafter collectively referred to as the "Tribe."

2. At some of the times relevant to the events alleged in this action, Plaintiff Echo Trail Holdings, LLC ("Echo Trail Holdings") was and is a limited liability company organized and existing under the laws of the State of California and was and is wholly owned by the Tribe.

3. At some of the times relevant to the events alleged in this action, defendant Nada L. Edwards ("Edwards") was and is an individual and an attorney at law licensed to practice in the State of California. On information and belief, Edwards practices in the State of California out of an office in the City of Santa Ana.

4. At all times relevant to the events alleged in this action, defendant Gary A. Kovall ("Kovall") was and is an individual and an attorney at law licensed to practice in the State of California with offices in various places in California. At some of the time referred to in this action through at least November 1, 2008, Kovall was affiliated in some capacity with Defendant Monteau & Peebles and its successors-in-interest described hereinafter.

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5. At some of the times relevant to the events alleged in this action, defendant Robert A. Rosette ("Rosette") was and is an individual and an attorney at law licensed to practice in the State of California. On information and belief, Rosette practices in the State of California out of offices in the Cities of San Francisco and Sacramento.

6. At some of the times relevant to the allegations herein, defendant Rosette & Associates PC ("R & A") was and is a professional law corporation with offices located in the State of California in the Cities of San Francisco and Sacramento.

7. At some of the times relevant to the allegations herein, defendant Fredericks Peebles & Morgan LLP ("FP & M") was and is a law partnership with offices in the State of California in the City of Sacramento. On information and belief, FP & M is the successor-in-interest of defendant Monteau & Peebles LLP ("M & P"), a legal partnership and defendant Fredericks & Peebles, LLP, ("F&P"), a legal partnership, both of which, at some of the times relevant to the allegations herein, had offices in the State of California in the City of Sacramento. Further, on information and belief, at some of the times relevant to the allegations herein, Rosette was the managing partner of M & P and/or F&P. In 2007, F & P re-organized itself and became FP & M.

8. Plaintiffs are unaware of the true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as Does 1 through 100, inclusive, and therefore sues said Defendants by such fictitious names. On information and belief, Plaintiffs allege that each fictitiously named Defendant is legally responsible in some manner for the wrongful conduct described below, and is therefore legally responsible for the injury and damage to Plaintiffs alleged in this action. Plaintiffs will amend this First Amended Complaint to allege the true names and capacities of these fictitiously named defendants when same has been ascertained.

9. On information and belief, Plaintiffs allege that the Defendants, and each of them, were the duly authorized and acting agents, employees, partners, joint venturers, co-conspirators and/or the alter ego of each of the other Defendants, and in doing the things

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alleged in this action, each Defendant was acting within the course and scope of his, her or its employment and authority from the other Defendants and/or the other Defendants have approved and/or ratified all such conduct.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

10. From and after about 1997, Kovall represented the Tribe and its related entities, first as an attorney with his own office and subsequently through a series of law partnerships and/or affiliations. Beginning in or about 2002, Kovall continued to represent the Tribe and also to provide advice and counsel to the Plaintiffs of a type generally provided by an entity's general counsel pursuant to an oral agreement. However, Kovall submitted written invoices for all of his services and was paid for all of his services by the Tribe.

11. Kovall's representation of the Tribe included advising the Tribe with respect to a variety of matters, including, without limitation, all phases of real estate investment, (such as, for example, the acquisition and valuation of real property and the retention of real estate lawyers, appraisers, and brokers), all phases of construction matters involving the Tribe, such as the retention and oversight of consultants, owner-representatives, contractors, and sub-contractors, and in connection with the negotiation of agreements with each such type of construction person and entity in connection with construction work proposed or undertaken by the Tribe. Kovall also represented the Tribe in mediations and litigation matters in which the Tribe was a party, including matters pertaining to the Tribe's business operations. Kovall also represented the Tribe with respect to political matters affecting the Tribe's business operations, and with respect to investments and other business transactions which were of potential benefit to the Tribe, including, without limitation, recyclables and solar products ventures. In the course of such representation, Kovall gained considerable and intimate knowledge regarding the Tribe's assets and business operations, as well as its organizational and social structure and chain of command and way of doing things.

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12. In or about 1998, Kovall recommended David Alan Heslop ("Heslop") to the Tribe as someone who had special knowledge, training and skill in business affairs and real business and estate ventures. Based on Kovall's recommendation, the Plaintiffs retained Heslop. Thereafter, Heslop began to advise the Tribe on various business ventures, including those described below, for which Heslop was paid as the Tribe's trusted advisor. In addition, based on the recommendation of Heslop, the Tribe entered into special consulting arrangements with various persons and entities who had been or were also associated with Heslop, and the Tribe paid Heslop and these other consultants hundreds of thousands of dollars for their services.

The Total Tire Venture

13. On information and belief, beginning in or about 2000 as a result of the recommendation of Heslop and Kovall, the Tribe invested over $5 million in a "recycling" venture in the Sacramento, California area. This was known as the "Total Tire" venture. The Tribe did not understand or appreciate that Heslop and Kovall arranged for the ownership of the Total Tire venture to be set up so that they each acquired an ownership interest in the Total Tire venture without investing any money of their own in the deal. Thus, the Tribe took all of the financial risk, which resulted in a total financial loss to the Tribe of over $5 million. Kovall and Heslop convinced the Tribe to invest more money in this venture when it was clear, or should have been clear, to them that further investment by the Tribe would be lost. As a result, the Tribe lost additional sums in the Total Tire venture of in excess of $1.5 million. Kovall submitted invoices for the legal work he did on the Total Tire venture and was paid for that work by the Tribe. Kovall failed to properly disclose the ownership interest he or Heslop was taking in the Total Tire venture and failed to obtain the informed consent of the Tribe to the taking of this interest.

Bardos

14. While Kovall represented the Tribe as described above and while Heslop advised the Tribe as described above, Kovall and Heslop recommended Paul P. Bardos for

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the position of Owner's Representative and/or consultant and/or contractor for the Tribe in connection with construction work the Tribe had undertaken or was about to undertake in connection with its business operations, including its casino. Again, while Kovall was representing the Tribe and while Heslop was advising the Tribe as described above, Kovall and Heslop recommended Paul P. Bardos, Bardos Construction, Inc., Bardos Construction Company and/or Cadmus Construction, Inc. ("Cadmus") (a Bardos company) (collectively "Bardos") for various positions and relationships with the Tribe without revealing (and, indeed, concealing) that either of them knew Bardos; in addition, on information and belief, Bardos compensated Kovall, either directly or through Heslop, for his recommendation of Bardos to the Tribe, and Kovall failed to disclose this benefit to the Tribe. Moreover, Kovall did not obtain the consent of the Tribe to his (Kovall's) receipt of these benefits from Bardos. In addition, Kovall hired for the Tribe, or recommended for hire by the Tribe, Bardos in connection with construction work related to the Tribe's casino operations without recommending a competitive bid process for the selection of a contractor, and at a time when Kovall knew or should have known the agreements proposed for Bardos for the construction work were inadequate and insufficient to protect the interests of the Tribe in that they allowed Bardos to charge excessive and unreasonable fees to the Tribe; and, Kovall knew or should have known that Cadmus, an entity Bardos used to provide services to the Tribe, lacked experience in construction of the types of projects for which it was hired by the Tribe and was undercapitalized and was unlicensed.

15. On information and belief, unbeknownst to the Tribe, while Kovall purported to represent and advise the Tribe in connection with its dealings with Bardos, Bardos was supplying work and materials to Kovall at little or no cost in connection with the construction or remodeling of property owned by Kovall in the Big Bear area. Kovall never disclosed these facts to the Tribe, nor did he obtain its consent to same and, in fact, took steps to conceal his receipt of any benefit from Bardos in connection with the remodel of Kovall's Big Bear property. On information and belief, Bardos supplied other benefits to

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Kovall, either directly or through Heslop. Kovall concealed his receipt of these other benefits from Bardos from the Tribe.

16. Further, on information and belief, Kovall recommended Bardos for other positions with the Tribe, or the Tribe's agents, including that of expert in litigation matters, and Kovall then used his position with the Tribe to approve Bardos' fee requests for such services. Again, all of this was done without disclosure by Kovall of his receipt of benefits from Bardos as described herein.

The Moskow Action

17. In or about 2001 or 2002, Kovall assisted Gene Gambale ("Gambale"), then one of the Tribe's attorneys and also an executive employee with the Tribe, in the preparation of a Joint Venture agreement between the Tribe and Al Oligino ("Oligino") then employed by the Tribe as the Owner's Representative in connection with certain construction work related to the Tribe's casino operations.

18. At or about the time of the expiration of the Owner's Representative agreement with the Tribe, Oligino and Gambale proposed to the Tribe that a parcel of real property in Laguna Beach be purchased and a house built or reconstructed on it by Oligino. It was agreed the house would then be sold and the profits divided between the Tribe and Oligino.

19. Under the Joint Venture agreement prepared by Kovall and Gambale, Oligino was required, among other things, to obtain insurance for the Laguna Beach project and have the Tribe named as an additional insured. Oligino obtained insurance for the project, but only had himself and his wife named as the insureds. On information and belief, the Tribe paid Oligino for the insurance, and Oligino took the funds but did not have the Tribe added as an insured.

20. In August, 2003, the house was sold to Dr. and Mrs. Lonnie Moskow (the "Moskows") for no profit. In June, 2004, the Moskows filed a construction defect case in Orange County Superior Court against the Tribe and certain of its members, and Mrs.

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Moskow claimed injury (bodily injury) from exposure to mold. Oligino tendered the defense of the action to "his" carrier. There was no insurance policy specifically insuring the Tribe with respect to this project. Kovall used this fact (and his failure to review the contract and follow-up on the builders' obligations) to justify his retention of Edwards, Rosette, M & P, F & P and subsequently FP & M to represent the Tribe in the Moskow action.

21. In or about 2004, Kovall retained Rosette and M & P to represent the Tribe and others in the defense of the Moskow action. On information and belief, Rosette was, at the time, a partner in the firm of M & P. In the same year, Kovall also retained Edwards to represent the Tribe in the defense of the Moskow action. Later, while still representing the Tribe in the Moskow action, M & P reorganized itself and became F & P. However, F & P continued to represent the Tribe in the Moskow action. In 2007, F & P reorganized itself into FP & M. However, FP & M continued to represent the Tribe in the Moskow action. Neither Kovall, Edwards, Rosette, R & A, M & P, F & P or FP & M tendered the defense of the action to the Tribe's general liability insurance carrier. The case was tendered but only to Oligino's carrier. That carrier denied the claim.

Kickbacks

22. On information and belief, Kovall, at the time of the Tribe's retention of Rosette, M & P, F & P and FP & M, had some sort of business relationship with M & P and later with F & P and FP & M, whereby he received some form of benefit, financial or otherwise, for business he referred to M & P, F & P and FP & M, including the business generated by the defense of the Tribe in the Moskow action. Kovall never advised the Tribe of the foregoing agreement with these firms, nor did he obtain the Tribe's informed written consent to his receipt of these benefits as required by applicable rules and laws.

23. On information and belief, Kovall retained Rosette and R & A pursuant to an oral agreement to represent the Tribe in the defense of the Moskow action in or about May, 2008. On information and belief, Kovall also had an agreement with Rosette and R & A

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pursuant to which he (Kovall) received some form of benefit, financial or otherwise, from Rosette and R & A for the business he referred to Rosette and R & A, including the business generated by the defense of the Moskow action. Neither Kovall, or Rosette or R & A advised the Tribe of the foregoing agreement with Rosette and R & A, nor did Kovall obtain the Tribe's informed written consent to his receipt of these benefits as required by applicable rules and laws.

24. Kovall continued to represent the Plaintiffs in connection with the matters described above until November 1, 2008. From and after 2008 to approximately February, 2009, Rosette and R & A represented the Tribe in various matters, including, without limitation, the defense of the Moskow action. On information and belief, Edwards continued to represent the Tribe on various matters, including the defense of the Moskow action until in or about December, 2008. On information and belief, M & P, F & P and FP & M concealed the fee splitting arrangement they had with Kovall and the Tribe did not discover same until in or about February, 2009.

25. Neither Kovall, Rosette, M & P, R & A, F & P nor FP & M ever disclosed to the Tribe the existence of the relationship between Kovall and them, nor did they disclose the benefit Kovall received from Rosette, M & P, F & P, FP & M or R & A for referring business to them, nor did they ever obtain the written consent from the Tribe for Kovall to receive such a benefit. In fact, these Defendants took steps to conceal the existence of this arrangement from the Tribe.

26. Kovall managed the defense of the Moskow action. In this capacity, he reviewed and approved the bills for the fees billed by Edwards, Rosette, M & P, F & P, FP & M, and R & A, as well as the fees of other firms and experts and consultants for the Tribe, fees he was apparently sharing with Rosette, M & P, F & P, FP & M and R & A.

Insurance Commutation Agreement

27. In 2005, 2006 and 2007, Kovall recommended to the Tribe that it enter into agreements in each of those years with its general liability insurance carrier "commuting"

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the coverage it had with the general liability carrier for claims arising in those years, whereby, in effect, the Tribe would be paid by the general liability carrier to cancel its general liability insurance coverage with the carrier. Kovall represented the Tribe in connection with its agreements to "commute" its general liability coverage in each of these years. Based on Kovall's recommendation and failure to disclose the possible adverse consequences to the Tribe from such agreements, the Tribe entered into agreements with its general liability carrier commuting its coverage for those years. Kovall did not disclose to the Tribe that it had a basis for coverage for the defense of the Moskow action under its policy with its general liability carrier, nor did he disclose that by "commuting" its coverage with its general liability carrier, it could lose its right to seek coverage for the claims made by the Moskows in the Moskow action or that it would have to pay more in costs of defending that action. On information and belief, Edwards, Rosette, M & P, F & P and FP & M knew, or should have known, that Kovall was commuting the coverage the Tribe had with its general liability carrier and knew, or should have known, that such agreement would adversely affect the rights of the Tribe to coverage for the defense of the Moskow action. Neither M & P, F & P, FP & M, Edwards or Rosette, advised the Tribe that the commutation of its policy of insurance could adversely affect the Tribe in any way in connection with the defense of the Moskow action.

The 47 Acres

28. Beginning in about 2005 and continuing into 2007, Kovall represented the Tribe with respect to the acquisition of approximately 47 acres of real property known as "Echo Trail" property (hereafter the "Echo Trail property"), from its then owner Dillon Road Associates, LLC. The Echo Trail property is located in the City of Coachella, County of Riverside. Ultimately, Kovall persuaded the Tribe to utilize the services of Windermere real estate brokerage as the buyer's broker in the transaction, with Peggy Shambaugh ("Shambaugh") as the responsible individual salesperson. On information and belief, Windermere and Shambaugh were brought into this transaction less than two months before

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it closed, at a point when negotiations between the Tribe and the then-owner of the land were at an end or near an end. Further, on information and belief, the services provided by Windermere and Shambaugh in connection with the Tribe's acquisition of the 47 acres were of little or no value to the Tribe.

29. Unbeknownst to the Tribe, at the time Kovall represented the Tribe in connection with the acquisition of the Echo Trail property, Kovall was in a romantic relationship with Shambaugh, in which the two, at the time of the purchase of the property, lived together and held themselves out as being husband and wife. In July 2008, following his divorce from his then-wife in 2007, Kovall and Shambaugh were formally married. At no time did Kovall ever disclose to the Tribe his relationship to Shambaugh. Instead, Kovall actively concealed his relationship with Shambaugh, as a means of personally benefiting from the purchase of the Echo Trail property. Such concealment and relationship created a clear conflict of interest for Kovall, who as noted above, represented the Tribe and Echo Trail Holdings, an entity formed by the Tribe to take title to parcels of real property, including the Echo Trail property.

30. Kovall, ostensibly on behalf of the Tribe, negotiated a sales price of $29 million, which was to include a 3.5% commission to Windermere and its licensed salesperson, Shambaugh. On information and belief, Kovall knew or should have known the Echo Trail property had a market value of no more than $20 million.

31. Later, as a result of negotiations conducted by Kovall, ostensibly on behalf of the Tribe, the commission for Windermere and Shambaugh was reduced from 3.5% to 3.0%, but the purchase price was raised to $31 million, apparently to compensate for the reduction in the percentage of the commission to Windermere and Shambaugh. At the time of the increase in purchase price, Kovall told the Tribe that the increase was the result of "some people from New York," who were supposedly interested in the property, and therefore constituted potential competitors for the property for the Tribe.

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32. The negotiations resulted in a September 19, 2007 option agreement between the seller and the purchaser Echo Trail property. Ultimately, the property sold to Echo Trail Holdings for $31 million, which amount was paid by the Tribe. The purchase of the property took place in or about November 2007. Shambaugh and/or Windermere received a total commission of approximately $1 million on the sale.

33. On information and belief, F & P and FP & M worked on the financing part of the acquisition of the 47 acres. They purportedly reviewed the documents for the sale and financing and met with and communicated with Kovall on many occasions. On further information and belief, despite being intimately involved with the acquisition of the 47 acres and despite the fact that they conducted "due diligence" with respect to the transaction, these defendants never advised the Plaintiffs of the Kovall/Shambaugh relationship and never advised the Plaintiffs that they were paying far in excess of the market value of the 47 acres. F & P and FP & M knew or should have known of the Kovall/Shambaugh relationship and knew or should have known that Plaintiffs were paying far in excess of the market value of the 47 acres.

34. On information and belief, Edwards represented the Plaintiffs in early 2008, within months of the purchase of the 47 acres, in connection with reassessment of the real estate taxes assessed on the 47 acres. Edwards knew or should have known of the Kovall/Shambaugh relationship and/or knew or should have known the Plaintiffs had paid at least $10 million more for the 47 acres than it was worth. Nevertheless, Edwards failed to disclose these facts to the Plaintiffs and filed to seek the proper re-assessment of the value of the 47 acres resulting in the payment of more real estate tax by the Plaintiffs than should have been paid.

Other Real Estate Deals Involving Windermere and Shambaugh

35. Prior to the Tribe's acquisition of the 47 acres and while Kovall was romantically involved with Shambaugh and, again, unbeknownst to the Tribe, Kovall arranged for Windermere and Shambaugh to represent the Tribe in connection with the

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acquisition of other parcels of real property located in the Coachella area. On information and belief, Plaintiffs allege that Windermere and Shambaugh received real estate commissions in connection with each such acquisition of real property from funds paid by the Tribe. For the reasons described above with respect to the 47 acres, Kovall had a conflict of interest with respect to the acquisition of each such parcel of real property paid for by the Tribe in that he failed to disclose to the Plaintiffs the existence of his relationship with Shambaugh, a material fact, and further failed to obtain their informed consent for Shambaugh to participate in these deals and receive compensation therefrom; and, as noted above, Kovall actually concealed his relationship with Shambaugh from the Tribe.

Emerald Solar

36. In or about 2007 and 2008, Kovall attempted to get the Tribe to invest in a solar project that was put together by Michael Derry. Kovall never disclosed to the Tribe that he (Kovall) had an ownership interest in one or both of the entities that would be part of this venture or obtain the consent of the Tribe for him to have an ownership interest in a project in which he sought to have the Tribe invest. F & P and/or FP & M provided legal services in connection with this solar project for which the Tribe paid them. F & P and FP & M knew or should have known of Kovall's interest in this project and should have disclosed the same to the Tribe. However, they did not and the Tribe invested thousands of dollars in legal services related to the project.

Unauthorized Practice of Law

37. Throughout the time they represented the Tribe, M & P, F & P, FP & M, and R & A utilized attorneys to work on the Tribe's matters some of whom were not licensed to practice law in the State of California, including the services provided in the defense of the Moskow action. These attorneys provided legal advice and counsel on California law matters and prepared pleadings and other legal instruments regarding California law. These above-described defendants, in turn, billed the Tribe for the services of these lawyers and the Tribe paid for those services. Kovall approved the billings by these defendants.

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Other Wrongful Conduct

38. Further, on information and belief, Kovall arranged for Shambaugh and/or Windermere to provide other types of real estate related services to the Tribe in other transactions and/or litigation involving the Tribe for which the Tribe paid Shambaugh and/or Windermere. Due to the above-described conflict of interest, these services were of questionable value and Kovall failed to disclose the conflict and/or failed to obtain a waiver of same from the Plaintiffs.

39. On information and belief, Kovall hired for the Tribe or recommended for hire by the Tribe, various law firms to represent the Tribe in the prosecution or defense of matters for the Tribe, including those law firms identified above as defendants in this action. In addition, some of these law firms (Nada Edwards) employed Kovall's daughter and/or son-in-law on work done for the Tribe, and Edwards and Kovall failed to disclose such fact to the Tribe and failed to obtain its consent to such employment. Neither Kovall or these law firms ever revealed this arrangement to the Tribe nor did the Tribe ever consent to such arrangements. Based on Kovall's conduct, as described above, the Tribe hired those law firms and paid them for the services for which they billed the Tribe.

FIRST CAUSE OF ACTION FOR PROFESSIONAL NEGLIGENCE

(By All Plaintiffs Against Kovall and Does 1-50)

40. Plaintiffs re-allege and incorporate here by this reference paragraphs 1 through 39, above, as though fully set forth at length.

41. On information and belief, Kovall and Does 1-50 negligently represented the Tribe and/or Echo Trail Holdings, and/or negligently negotiated agreements for the Tribe and/or Echo Trail Holdings, and/or negligently prepared agreements and documents for the Tribe and/or Echo Trail Holdings, and/or negligently advised the Plaintiffs with respect to business matters and/or negligently supervised agents, representatives and/or employees of the Tribe, including, without limitation, Heslop, Windermere, Shambaugh, Bardos, Rosette,

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R & A, M & P, F & P and FP & M, as described above, in connection with the business affairs of the Tribe for which Kovall was paid by the Tribe to represent the Tribe, and the Tribe and/or Echo Trail Holdings has sustained loss and injury as a direct and proximate result of such conduct, the precise amount of which is presently unknown, but which exceeds the jurisdictional minimum of this Court.

42. In addition, and again on information and belief, Kovall and his associates, romantic and otherwise, have profited by Kovall's representation of the Tribe and/or Echo Trail Holdings, at the Plaintiffs' expense, as described above. Further, the Tribe has paid Kovall fees for this negligent and wrongful work which Kovall should return to the Tribe, together with interest. In addition, Kovall has received benefits and/or kickbacks as described above for business received by others from the Tribe and Kovall has been unjustly enriched by the receipt of such benefits and kickbacks. Kovall should be made to pay over those benefits to the Tribe, and where those funds or benefits have been invested in other property by Kovall, a constructive trust should be imposed on Kovall's interest in any such property. In addition, as a further direct and proximate result of Kovall's wrongful conduct, as described above, the Tribe has incurred and continues to incur expenses, including, without limitation, legal fees and arbitration expenses, to extricate itself from the legal problems caused or contributed to by Kovall and his wrongful conduct. In addition, Kovall urged the Tribe to take interests in solar business ventures, recycling businesses and other interests without disclosing the existence of a business relationship between himself and the other members of these ventures and/or without disclosing his own interest in these ventures and/or without adequately disclosing these facts and/or without obtaining the informed consent of the Tribe. On information and belief, Kovall also charged the Tribe fees for work done on these ventures in which he or his business associates had an interest. In addition, the Tribe paid other attorneys, as described above, legal fees for work done on the solar project.

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43. Kovall continued to represent the Plaintiffs on various matters, including the matters described above, until November 1, 2008, when he resigned as counsel for the Plaintiffs. Prior to such resignation, Kovall failed to disclose the foregoing described conflicts, misconduct and failures to adequately and competently represent the Plaintiffs.

SECOND CAUSE OF ACTION FOR BREACH OF CONTRACT

(By All Plaintiffs Against Kovall and Does 1-50)

44. Plaintiffs re-allege and incorporate her by this reference paragraphs 1 through 43, above, as though fully set forth at length.

45. Kovall expressly and impliedly agreed to, among other things, represent the Plaintiffs competently and according to the standard of care for attorneys performing such services, not to assume a position of conflict of interest with the Plaintiffs in connection with his representation of Plaintiffs on such matters, to accept as compensation for these services only the amount he billed the Plaintiffs, not to accept or retain compensation, kickbacks or benefits from persons with whom the Plaintiffs dealt without fully disclosing such benefits to the Plaintiffs and without first obtaining the Plaintiffs informed written consent thereto, and to always put Plaintiffs' interests ahead of his own in all matters in connection with which Kovall represented the Plaintiffs. Kovall's contract with the Plaintiffs was partly verbal and partly in writing. Plaintiffs performed all of the things required of them under the agreement described above, and there is no condition to their right to full performance of the agreement from the Defendants.

46. In doing or failing to do the things described above, the Defendants breached the agreements they had with the Plaintiffs, together with obligations imposed by law by, among other things:

(a) Failing to represent the Plaintiffs competently and according to the standard of care for attorneys performing such services as described

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in greater detail, above in Paragraphs 13-21, 27, 28-34, 35, 36, 38 and 39, above, as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Assuming positions of conflict of interest with the Plaintiffs in connection with Kovall's representation of Plaintiffs in such matters as described in greater detail above in Paragraphs 13-16, 22-26, 27, 28-32, 35, 36, 38 and 39, above, as prohibited by the Rules of Professional Conduct, Rule 3-300;

(c) Accepting as compensation for these services compensation and benefits in excess of the amount billed the Plaintiffs for such services as described, above, in Paragraphs 13, 14-16, 22-26, 27, 29, 35, 36, 38 and 39, above, as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500;

(d) Accepting and retaining compensation, kickbacks or benefits from persons with whom the Plaintiffs dealt as described above in Paragraphs 14-16, 22-26, 29, 35, 38, 39, above, as prohibited by the Rules of Professional Conduct, Rules 4-200, 3-300, 3-500 and 1-120;

(e) Failing to disclose such benefits to the Plaintiffs as described in Paragraphs 13, 14, 15, 16, 22-26, 29, 35, 36, 38 and 39, above, as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500;

(f) Failing to obtain Plaintiffs' informed written consent to the matters describe in subparagraphs (a) through (e), above, as prohibited by the Rules of Professional Conduct, Rules 4-200, 3-500 and 3-300;

(g) Assisting in the unauthorized practice of law in California of persons not licensed to practice law in California and failing to disclose same to the Plaintiffs as described in Paragraph 37, above, as prohibited by the Rules of Professional Conduct, Rule 1-300; and,

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(h) Failing to put Plaintiffs' interests ahead of his own in all matters in connection with which Kovall represented the Plaintiffs as described in Paragraphs 13-39, above.

47. On information and belief, Plaintiffs allege that Defendants have breached the agreements described above with Plaintiffs in other and further ways as to which Plaintiffs are not yet aware.

48. As a direct and proximate breach by the Defendants, Plaintiffs have suffered the damages and injuries described above in Paragraph 42 and are further entitled to the remedies described above in Paragraph 42 .

THIRD CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENTANT OF GOOD FAITH AND FAIR DEALING

(By All Plaintiffs Against Kovall and Does 1-50)

49. Plaintiffs re-allege and incorporate here by their reference paragraphs 1 through 48, above, as though set forth in full.

50. In every contract entered into or to be performed in this State, there is an implied covenant of good faith and fair dealing which requires each of the parties to the contract to take no action to prevent the other party to the contract from realizing the benefit of same.

51. In doing the things described above, the Defendants breached the covenant of good faith and fair dealing by, among other things:

(a) Failing to represent the Plaintiffs competently and according to the standard of care for attorneys performing such services as described in greater detail, above in Paragraphs 13-21, 27, 28-34, 35, 36, 38 and 39, above, as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Assuming positions of conflict of interest with the Plaintiffs in connection with Kovall's representation of Plaintiffs on such matters as

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described in greater detail, above in Paragraphs 13-16, 22-26, 27, 28-32, 35, 36, 38 and 39, above, as prohibited by the Rules of Professional Conduct, Rule 3-300;

(c) Accepting as compensation for these services compensation and benefits in excess of the amount he billed the Plaintiffs for such services as described, above, in Paragraphs 13, 14-16, 22-26, 27, 29, 35, 36, 38 and 39, above, as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500;

(d) Accepting and retaining compensation, kickbacks or benefits from person with whom the Plaintiffs dealt as described above in Paragraphs 14-16, 22-26, 29, 35, 38, 39, above, as prohibited by the Rules of Professional Conduct, Rules 4-200, 3-300, 3-500 and 1-120;

(e) Failing to disclose such benefits to the Plaintiffs as described in Paragraphs 13, 14, 15, 16, 22-26, 29, 35, 36, 38 and 39, above, as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500;

(f) Failing to obtain Plaintiffs' informed written consent to the matters describe in subparagraphs (a) through (e), above, as prohibited by the Rules of Professional Conduct, Rules 4-200, 3-500 and 3-300; and,

(g) Assisting in the unauthorized practice of law in California of persons not licensed to practice law in California and failing to disclose same to the Plaintiffs as described in Paragraph 37, above, as prohibited by the Rules of Professional Conduct, Rule 1-300; and,

(h) Failing to put Plaintiffs interests ahead of their own in all matters in connection with which Kovall represented the Plaintiffs as described in Paragraphs 13-39, above.

52. To the extent that they do not represent breaches of express contract, Defendants, by doing or failing to do these things, nonetheless prevented the Tribe from

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realizing the benefits of the contract, and thwarted the Tribe's reasonable expectation that the Defendants would perform services for it competently; that they would fully and adequately supervise the attorneys who were associated with them; that they would not provide Kovall with unauthorized benefits and kickbacks so as to induce him to provide them with more work at the expense of the Tribe; and, that they would not utilize the services of attorneys who were not admitted to practice in California and/or who were unfamiliar with California and State Court procedures. On information and belief, the Tribe alleges Defendants have breached the implied covenant of good faith and fair dealing with Plaintiffs in other and further ways as to which the Tribe is not yet aware.

53. As a direct and proximate result of the breach by the Defendants, Plaintiffs have suffered the damages and injuries described above in Paragraph 42 and are further entitled to the remedies described above in Paragraph 42 described above.

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FOURTH CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY

(By All Plaintiffs Against Kovall and Does 1-50)

54. Plaintiffs re-allege and incorporate here by their reference paragraphs 1 through 53, above as thought fully set forth at length.

55. Given their position as attorneys and given the nature of the services they undertook to provide Plaintiffs and for which they were paid by Plaintiffs, Defendants occupied a position in their dealings with Plaintiffs as fiduciaries.

56. In doing the things described above, the Defendants breached their fiduciary duties to Plaintiffs by, among other things:

(a) Assuming positions of conflict of interest with the Plaintiffs in connection with their representation of Plaintiffs on such matters as described in greater detail, above in Paragraphs 13-16, 22-26, 27, 28-32, 35, 36, 38 and 39, above, as prohibited by the Rules of Professional Conduct, Rule 3-300;

(b) Accepting as compensation for these services compensation and benefits in excess of the amount he billed the Plaintiffs for such services as described, above, in Paragraphs 13, 14-16, 22-26, 27, 29, 35, 36, 38 and 39, above, as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500;

(c) Accepting and retaining compensation, kickbacks or benefits from persons with whom the Plaintiffs dealt as described above in Paragraphs 14-16, 22-26, 29, 35, 38, 39, above, as prohibited by the Rules of Professional Conduct, Rules 4-200, 3-300,3-500 and 1-120;

(d) Failing to disclose such benefits to the Plaintiffs as described in Paragraphs 13, 14, 15, 16, 22-26, 29, 35, 36, 38 and 39, above, and as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500;

(e) Assisting in the unauthorized practice of law in California of persons not licensed to practice law in California and failing to disclose same to the Plaintiffs as described in Paragraph 37 above as prohibited by the Rules of Professional Conduct, Rule 1-300; and,

(f) Failing to put Plaintiffs interests ahead of his own in all matters in connection with which Kovall represented the Plaintiffs as described in Paragraphs 13-39.

57. As a direct and proximate result of the breach by the Defendants, Plaintiffs have suffered the damages and injuries described above in Paragraph 42 and are further entitled to the remedies described above in Paragraph 42 described above.

58. In doing or failing to do the things described above in Paragraphs 14-16, 22-26, 28-32, 35, 36, 38 and 39, above, Defendants acted with malice, fraud or oppression as those terms are defined by California law by, among other things, knowingly and deliberately:

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(a) Assuming positions of conflict of interest with the Plaintiffs in connection with their representation of Plaintiffs on such matters as described in greater detail, above in Paragraphs 13-16, 22-26, 27, 28-32, 35, 36, 38 and 39, above, as prohibited by the Rules of Professional Conduct, Rule 3-300;

(b) Accepting as compensation for these services compensation and benefits in excess of the amount Kovall billed the Plaintiffs for such services as described, above, in Paragraphs 13, 14-16, 22-26, 27, 29, 35, 36, 38 and 39, above, as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500;

(c) Accepting and retaining compensation, kickbacks or benefits from persons with whom the Plaintiffs dealt as described above in Paragraphs 14-16, 22-26, 29, 35, 38, 39, above, as prohibited by the Rules of Professional Conduct, Rules 4-200, 3-300,3-500 and 1-120;

(d) Failing to disclose such benefits to the Plaintiffs as described in Paragraphs 13, 14, 15, 16, 22-26, 29, 35, 36, 38 and 39, above, as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500;

(e) Assisting in the unauthorized practice of law in California of persons not licensed to practice law in California and failing to disclose same to the Plaintiffs as described in Paragraph 37 above as prohibited by the Rules of Professional Conduct, Rule 1-300; and,

(f) Concealing the matters described in subparagraphs (a) through (e), above.

Accordingly, in addition to any other relief awarded to the Plaintiffs against the Defendants, Plaintiffs are entitled to the imposition of punitive damages.

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FIFTH CAUSE OF ACTION FOR PROFESSIONAL NEGLIGENCE

(By the Tribe Against Edwards and Does 51 – 61)

59. The Tribe re-alleges and incorporates here by this reference paragraphs 1 through 39, 41 and 42, above, as though fully set forth at length.

60. The Tribe retained Edwards to represent its interests in various matters, including the Moskow action and Edwards agreed to and assumed the representation of the Tribe in those matters pursuant to an oral agreement.

61. On information and belief, Edwards and the other defendants named in this cause of action, negligently represented the Tribe, and/or negligently handled litigation for the Tribe, and/or negligently negotiated agreements for the Tribe, and/or negligently prepared agreements and documents for the Tribe, and/or negligently represented the Tribe in certain business matters, and/or negligently supervised agents, representatives and/or employees of the Tribe, including, without limitation, other attorneys, consultants and experts, by, among other things:

(a) Failing to properly assert the defense of Sovereign Immunity in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Agreeing to waive arbitration in the Moskow action, thereby exposing the Tribe to greater potential liability without fully analyzing and advising the Tribe about the such waiver as prohibited by the Rules of Professional Conduct, Rule 3-110;

(c) Failing to properly tender the defense of the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(d) Failing to conduct sufficient and adequate discovery in the Moskow action, as prohibited by the Rules of Professional Conduct, Rule 3-110;

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(e) Employing and/or using consultants and experts in the defense of the Moskow action, such as Shambaugh and Bardos, who had conflicts of interest or were otherwise subject to claims of bias and impropriety as prohibited by the Rules of Professional Conduct, Rule 3-110;

(f) Failing to disclose conflicts of interest as described in Paragraphs 25, 26, 29, 34 and 39, above as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500;

(g) Failing to obtain a written informed consent from the Tribe to the conflicts and secret benefits;

(h) Failing to properly supervise attorneys who were not licensed to practice in California and/or who were unfamiliar with California Court rules as they relate to litigation and Local Rules as prohibited by the Rules of Professional Conduct, Rule 1-300;

(i) Failing to supervise other attorneys, consultants, experts, vendors; and,

(j) Failing to disclose the existence of the Kovall/Shambaugh relationship and that the Tribe had paid in excess of the value of the 47 acres as described in Paragraph 34, above.

62. On information and belief, the Tribe alleges that there are other instances in which Defendants negligently represented the interests of the Tribe of which the Tribe is not aware at this time.

63. The Tribe's agreement with Edwards for representation of the Tribe in connection with the Moskow action and the other matters referred to above was verbal, except that the Edwards submitted written invoices for the services Defendants provided and the Tribe paid those invoices.

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64. As a direct and proximate breach by the Defendants, the Tribe has suffered the damages and injuries described above in Paragraphs 41 and 42 and is further entitled to the remedies described above in Paragraphs 41 and 42. In addition, as described above, the Tribe has suffered additional damages and injuries related to amounts which it paid Defendants in connection with certain purported experts and consultants in the Moskow action. Further, the Tribe has paid these Defendants fees for this negligent and wrongful work which each Defendant should return to the Tribe, together with all amounts paid to them and interest. And, as a further direct and proximate result of the wrongful conduct of these Defendants, as described above, the Tribe has incurred and continues to incur expenses, including, without limitation, legal fees, to extricate itself from the legal problems brought about by these Defendants and their wrongful conduct. In addition, and without limitation, these Defendants failed to disclose the existence of the relationship Kovall had with them or that he was receiving anything of value from these attorneys for having referred the representation of the Tribe to them and without obtaining the Tribe's informed, written consent to such arrangement.

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SIXTH CAUSE OF ACTION FOR BREACH OF CONTRACT

(By the Tribe Against Edwards and Does 51 – 61)

65. The Tribe re-alleges and incorporates here by this reference paragraphs 1 through 39 and Paragraphs 59 through 64, above, as though fully set forth at length.

66. In doing or failing to do the things described, the Defendants breached the agreements they had with the Tribe, together with obligations imposed by law, by among other things:

(a) Failing to properly assert the defense of Sovereign Immunity in the Moskow action, as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Agreeing to waive arbitration in the Moskow action, thereby exposing the Tribe to greater potential liability without fully analyzing and advising the Tribe about such waiver as prohibited by the Rules of Professional Conduct, Rule 3-110;

(c) Failing to properly tender the defense of the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(d) Failing to conduct sufficient and adequate discovery in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(e) Employing and/or using consultants and experts in the defense of the Moskow action who had conflicts of interest or were otherwise subject to claims of bias and impropriety as prohibited by the Rules of Professional Conduct, Rule 3-110;

(f) Failing to disclose conflicts of interest as described as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500;

(g) Failing to obtain a written informed consent from the Tribe to the conflicts and secret benefits;

(h) Failing to properly supervise attorneys who were not licensed to practice in California and/or who were unfamiliar with California Court rules as they relate to litigation and Local Rules as prohibited by the Rules of Professional Conduct, Rule 1-300;

(i) Failing to supervise other attorneys, consultants, experts, vendors; and,

(j) Failing to disclose the existence of the Kovall/Shambaugh relationship and that the Tribe had paid in excess of the value of the 47 acres as described in Paragraph 34, above.

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67. On information and belief, the Tribe alleges that Defendants have breached the agreements described above with the Tribe in other and further ways as to which the Tribe is not yet aware.

68. As a direct and proximate breach by the Defendants, the Tribe has suffered the damages and injuries described above in Paragraph 64 and is further entitled to the remedies described above in Paragraph 64.

SEVENTH CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(By the Tribe Against Edwards and Does 51 – 61)

69. The Tribe re-alleges and incorporates here by this reference paragraphs 1 through 39 and 59 through 68, above, as though fully set forth at length.

70. In every contract entered into or to be performed in this State, there is an implied covenant of good faith and fair dealing which requires each of the parties to the contract to take no action to prevent the other party to the contract from realizing the benefit of same.

71. In doing the things described above, the Defendants breached the covenant of good faith and fair dealing by, among other things:

(a) Failing to properly assert the defense of Sovereign Immunity in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Agreeing to waive arbitration in the Moskow action, thereby exposing the Tribe to greater potential liability without fully analyzing as prohibited by the Rules of Professional Conduct, Rule 3-110;

(c) Failing to properly tender the defense of the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

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(d) Failing to conduct sufficient and adequate discovery in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(e) Employing and/or using consultants and experts in the defense of the Moskow action who had conflicts of interest or were otherwise subject to claims of bias and impropriety as prohibited by the Rules of Professional Conduct, Rule 3-110;

(f) Failing to disclose conflicts of interest as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500;

(g) Failing to obtain a written informed consent from the Tribe to the conflicts and secret benefits, above;

(h) Failing to properly supervise attorneys who were not licensed to practice in California and/or who were unfamiliar with California Court rules as they relate to litigation and Local Rules and as prohibited by the Rules of Professional Conduct, Rule 1-300;

(i) Failing to supervise other attorneys, consultants, experts, vendors; and,

(j) Failing to disclose the existence of the Kovall/Shambaugh relationship and that the Tribe had paid in excess of the value of the 47 acres as described in Paragraph 34, above.

72. To the extent that they do not represent breaches of express contract, Defendants, by doing or failing to do these things, nonetheless prevented the Tribe from realizing the benefits of the contract, and thwarted the Tribe's reasonable expectation that the Defendants would perform services for it competently; that they would fully and adequately supervise the attorneys who were associated with them; that they would not provide Kovall with unauthorized benefits and kickbacks so as to induce him to provide them with more work at the expense of the Tribe; and, that they would not utilize the

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services of attorneys who were not admitted to practice in California and/or who were unfamiliar with California and State Court procedures. On information and belief, the Tribe alleges Defendants have breached the implied covenant of good faith and fair dealing with Plaintiffs in other and further ways as to which the Tribe is not yet aware.

73. As a direct and proximate result of the breach by the Defendants, the Tribe has suffered the damages and injuries described above in Paragraph 64 and is further entitled to the remedies described above in Paragraph 64 described above.

EIGHTH CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY

(By the Tribe Against Edwards and Does 51 – 61)

74. The Tribe re-alleges and incorporates here by this reference paragraphs 1 through 39 and 59 through 73, above, as though fully set forth at length.

75. Given their position as attorneys and given the nature of the services they provided to the Tribe for which they were paid, Defendants occupied a position in their dealings with the Tribe as fiduciaries.

76. In doing the things described above, the Defendants breached their fiduciary duties to the Tribe by, among other things:

(a) Failing to properly assert the defense of Sovereign Immunity in the Moskow action and as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Agreeing to waive arbitration in the Moskow action, thereby exposing the Tribe to greater potential liability without fully analyzing and advising the Tribe about such waiver as prohibited by the Rules of Professional Conduct, Rule 3-110;

(c) Failing to properly tender the defense of the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

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(d) Failing to conduct sufficient and adequate discovery in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(e) Employing and/or using consultants and experts in the defense of the Moskow action who had conflicts of interest or were otherwise subject to claims of bias and as prohibited by the Rules of Professional Conduct, Rule 3-110;

(f) Failing to disclose conflicts of interest as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500;

(g) Failing to obtain a written informed consent from the Tribe to the conflicts and secret benefits described in Paragraph 34, above;

(h) Failing to properly supervise attorneys who were not licensed to practice in California and/or who were unfamiliar with California Court rules as they relate to litigation and Local Rules as prohibited by the Rules of Professional Conduct, Rule 1-300;

(i) Failing to supervise other attorneys, consultants, experts, vendors; and,

(j) Failing to discover and/or to disclose the romantic relationship between Kovall and Shambaugh as described in Paragraph 34, above.

77. To the extent that they do not represent breaches of express contract, Defendants, by doing or failing to do these things, nonetheless prevented the Tribe from realizing the benefits of the contract, and thwarted the Tribe's reasonable expectation that the Defendants would perform services for it competently; that they would fully and adequately supervise the attorneys who were associated with them; that they would not provide Kovall with unauthorized benefits and kickbacks so as to induce him to provide them with more work at the expense of the Tribe; and, that they would not utilize the

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services of attorneys who were not admitted to practice in California and/or who were unfamiliar with California and State Court procedures. On information and belief, the Tribe alleges Defendants have breached the implied covenant of good faith and fair dealing with Plaintiffs in other and further ways as to which the Tribe is not yet aware.

NINTH CAUSE OF ACTION FOR PROFESSIONAL NEGLIGENCE

(By the Tribe Against M & P, F & P, FP & M and Does 62- 74)

78. The Tribe re-alleges and incorporates here by this reference paragraphs 1 through 39 as though fully set forth at length.

79. The Tribe retained M & P, F & P, FP & M and Does 62 through 74 to represent its interests in the Moskow action and also in connection with other legal matters other than the Moskow action, and Defendants agreed to and did assume the representation of the Tribe in the Moskow action and in connection with certain other matters as described in Paragraphs 27, 33 and 36, above pursuant to an oral agreement.

80. M & P, F & P and/or FP & M continued to represent the Tribe on various matters, including the defense of the Moskow action until in or about July, 2008, and as alleged above, Kovall, their agent, continued to represent the Tribe until November 1, 2009. On information and belief, M & P, F & P and FP & M concealed their negligent handling of the Moskow action and the fee splitting arrangement they had with Kovall and the other acts wrongdoing referred to in Paragraphs 27, 33, 36 and 37, above, and the Tribe did not discover same until in or about February, 2009.

81. On information and belief, the defendants named in this cause of action, negligently represented the Tribe, and/or negligently handled litigation for the Tribe, and/or negligently negotiated agreements for the Tribe, and/or negligently prepared agreements and documents for the Tribe, and/or negligently provided other services, and/or negligently supervised agents, representatives and/or employees of the Tribe by, among other things:

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(a) Failing to properly assert the defense of Sovereign Immunity in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Agreeing to waive arbitration in the Moskow action, thereby exposing the Tribe to greater potential liability, without fully analyzing and advising the Tribe about such waiver as prohibited by the Rules of Professional Conduct, Rule 3-110;

(c) Failing to properly tender the defense of the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(d) Failing to conduct sufficient and adequate discovery in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(e) Employing and/or using consultants and experts in the defense of the Moskow action, such as Shambaugh and Bardos, who had conflicts of interest or were otherwise subject to claims of bias and impropriety as prohibited by the Rules of Professional Conduct, Rule 3-110;

(f) Failing to disclose conflicts of interest as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500, by, among other things, providing Kovall with benefits and/or a portion of the fees paid by the Tribe to Defendants and/or by providing Kovall with kickbacks;

(g) Failing to obtain a written informed consent from the Tribe to the conflicts and secret benefits and sub-paragraph (f), above;

(h) Failing to properly supervise attorneys who were not licensed to practice in California and/or who were unfamiliar with California Court rules as they relate to litigation and Local Rules as described above in

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Paragraphs 37 as prohibited by the Rules of Professional Conduct, Rule 1-300;

(i) Failing to supervise other attorneys, consultants, experts, vendors;

(j) Failing to discover or and/or to disclose the existence of Kovall's ownership interests in the Emerald Solar deal as described in Paragraph 36, above; and,

(k) Failing to discover and/or to disclose the romantic relations between Kovall and Shambaugh as described in Paragraphs 28 and 29, above, or the fact that the Tribe was paying at least 10 million more for the 47 acres than it was worth as described in Paragraph 33, above.

82. On information and belief, the Tribe alleges that there are other instances in which Defendants negligently represented the interests of the Tribe of which the Tribe is not aware at this time.

83. The Tribe's agreement with the Defendants for representation of the Tribe in connection with the matters described above was verbal, except that Defendants submitted written invoices for the services Defendants provided and the Tribe paid those invoices.

84. In addition to the financial conflicts and malfeasance described above, M & P, F & P and FP & M , negligently represented the Tribe, and/or negligently handled litigation for the Tribe, and/or negligently negotiated agreements for the Tribe, and/or negligently prepared agreements and documents for the Tribe, and/or negligently supervised agents, representatives and/or employees of the Tribe, including, without limitation, Kovall as described above, and certain purported experts and consultants in the Moskow action, including Shambaugh and Bardos, in connection with the business affairs of the Tribe for which each such Defendant was paid by the Tribe to represent the Tribe, and the Tribe has sustained loss and injury as a direct and proximate result of such conduct, the precise amount of which is presently unknown, but which exceeds the jurisdictional minimum of

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this Court. Further, the Tribe has paid these Defendants fees for this negligent and wrongful work which each Defendant should return to the Tribe, together with all amounts paid Kovall, and interest. And, as a further direct and proximate result of the wrongful conduct of these Defendants, as described above, the Tribe has incurred and continues to incur expenses, including, without limitation, legal fees, to extricate itself from the legal problems brought about by these Defendants and their wrongful conduct. In addition, and without limitation, these Defendants failed to disclose the existence of the relationship Kovall had with them or that he was receiving anything of value from these attorneys for having referred the representation of the Tribe to them and without obtaining the Tribe's informed, written consent to such arrangement. Acccordingly, Defendants should be required to pay over to the Tribe an amount equal to all of the compensation, benefits and/or kick backs provided to Kovall for work he referred to them involved the Tribe.

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TENTH CAUSE OF ACTION FOR BREACH OF CONTRACT

(By the Tribe Against M & P, F & P, FP & M and Does 62 - 74)

85. The Tribe re-alleges and incorporates here by this reference paragraphs 1 through 39 and Paragraphs 78 through 84, above, as though fully set forth at length.

86. In doing or failing to do the things described, the Defendants breached the agreements they had with the Tribe, together with obligations imposed by law by, among other things:

(a) Failing to properly assert the defense of Sovereign Immunity in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Agreeing to waive arbitration in the Moskow action, thereby exposing the Tribe to greater potential liability without fully analyzing and

advising the Tribe about such waiver as prohibited by the Rules of Professional Conduct, Rule 3-110;

(c) Failing to properly tender the defense of the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(d) Failing to conduct sufficient and adequate discovery in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(e) Employing and/or using consultants and experts in the defense of the Moskow action, such as Shambaugh and Bardos, who had conflicts of interest or were otherwise subject to claims of bias and impropriety as prohibited by the Rules of Professional Conduct, Rule 3-110;

(f) Failing to disclose conflicts of interest as described in Paragraphs 22-26, above as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500, by, among other things, providing Kovall with benefits and/or a portion of the fees paid by the Tribe to Defendants and/or by providing Kovall with kickbacks;

(g) Failing to obtain a written informed consent from the Tribe to the conflicts and secret benefits described in Paragraphs 22-26, above;

(h) Failing to properly supervise attorneys who were not licensed to practice in California and/or who were unfamiliar with California Court rules as they relate to litigation and Local Rules as prohibited by the Rules of Professional Conduct, Rule 1-300; and,

(i) Failing to supervise other attorneys, consultants, experts, vendors;

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(j) Failing to discover or and/or to disclose the existence of Kovall's ownership interests in the Emerald Solar deal as described in Paragraph 36, above, and,

(k) Failing to discover and/or to disclose the romantic relations between Kovall and Shambaugh as described in Paragraphs 28 and 29, above, or the fact that the Tribe was paying at least 10 million more for the 47 acres than it was worth as described in Paragraph 33, above.

87. On information and belief, the Tribe alleges that Defendants have breached the agreements described above with the Tribe in other and further ways as to which the Tribe is not yet aware.

88. As a direct and proximate breach by the Defendants, the Tribe has suffered the damages and injuries described above in Paragraph 84 and is further entitled to the remedies described above in Paragraph 84 .

ELEVENTH CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(By the Tribe Against M & P, F & P, FP & M and Does 62- 74)

89. The Tribe re-alleges and incorporates here by this reference paragraphs 1 through 39 and 78 through 88, above, as though fully set forth at length.

90. In every contract entered into or to be performed in this State, there is an implied covenant of good faith and fair dealing which requires each of the parties to the contract to take no action to prevent the other party to the contract from realizing the benefit of same.

91. In doing the things described above, the Defendants breached the covenant of good faith and fair dealing by, among other things:

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(a) Failing to properly assert the defense of Sovereign Immunity in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Agreeing to waive arbitration in the Moskow action, thereby exposing the Tribe to greater potential liability without fully analyzing and advising the Tribe about such waiver as prohibited by the Rules of Professional Conduct, Rule 3-110;

(c) Failing to properly tender the defense of the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(d) Employing and/or using consultants and experts in the defense of the Moskow action, such as Shambaugh and Bardos, who had conflicts of interest or were otherwise subject to claims of bias and impropriety, as prohibited by the Rules of Professional Conduct, Rule 3-110;

(e) Failing to disclose conflicts of interest as described in Paragraphs 22-26, above as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500, by, among other things, providing Kovall with benefits and/or a portion of the fees paid by the Tribe to Defendants and/or by providing Kovall with kickbacks;

(f) Failing to obtain a written informed consent from the Tribe to the conflicts and secret benefits described in Paragraphs 22-26, above;

(g) Failing to properly supervise attorneys who were not licensed to practice in California and/or who were unfamiliar with California Court rules as they relate to litigation and Local Rules as described above in Paragraph 37, above, and as prohibited by the Rules of Professional Conduct, Rule 1-300;

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(h) Failing to supervise other attorneys, consultants, experts, vendors;

(i) Failing to discover or and/or to disclose the existence of Kovall's ownership interests in the Emerald Solar deal as described in Paragraph 36, above; and,

(j) Failing to discover and/or to disclose the romantic relationship between Kovall and Shambaugh as described in Paragraphs 28 and 29, above, or the fact that the Tribe was paying at least 10 million more for the 47 acres than it was worth as described in Paragraph 33, above.

92. To the extent that they do not represent breaches of express contract, Defendants, by doing or failing to do these things, nonetheless prevented the Tribe from realizing the benefits of the contract, and thwarted the Tribe's reasonable expectation that the Defendants would perform services for it competently; that they would fully and adequately supervise the attorneys who were associated with them; that they would not provide Kovall with unauthorized benefits and kickbacks so as to induce him to provide them with more work at the expense of the Tribe; and, that they would not utilize the services of attorneys who were not admitted to practice in California and/or who were unfamiliar with California and State Court procedures. On information and belief, the Tribe alleges Defendants have breached the implied covenant of good faith and fair dealing with Plaintiffs in other and further ways as to which the Tribe is not yet aware.

93. As a direct and proximate result of the breach by the Defendants, the Tribe has suffered the damages and injuries described above in Paragraph 84 and is further entitled to the remedies described above in Paragraph 84 described above.

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TWELFTH CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY

(By the Tribe Against M & P, F & P, FP & M and Does 62- 74)

94. The Tribe re-alleges and incorporates here by this reference paragraphs 1 through 39 and 78 through 93, above, as though fully set forth at length.

95. Given their position as attorneys and given the nature of the services they provided to the Tribe for which the Tribe paid the Defendants, the Defendants occupied a position in their dealings with the Tribe as fiduciaries.

96. In doing the things described above, the Defendants breached their fiduciary duties to the Tribe by, among other things:

(a) Employing and/or using consultants and experts in the defense of the Moskow action, such as Shambaugh and Bardos, who had conflicts of interest or were otherwise subject to claims of bias and impropriety as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Providing Kovall with benefits and/or a portion of the fees paid by the Tribe to Defendants and/or by providing Kovall with kickbacks, knowing that Kovall was responsible for making recommendations to hire them and for reviewing and approving their bills for services and by failing to disclose this conflict of interest as described in Paragraphs 22-25, 27 and 36, above as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500, by, among other things,;

(c) Failing to obtain a written informed consent from the Tribe to the conflicts and secret benefits described in Paragraphs 22-25 and 27, above;

(d) Failing to properly supervise attorneys who were not licensed to practice in California and/or who were unfamiliar with California Court

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rules as they relate to litigation and Local Rules as described above in Paragraphs 37 and as prohibited by the Rules of Professional Conduct, Rule 1-300; and by misrepresenting to the Tribe that these attorneys were fully competent to handled the Tribe's legal affairs in actions in California;

(e) Failing to supervise other attorneys, consultants, experts, vendors;

(f) Failing to put the Tribe's interests ahead of their own in all matters in connection with which Kovall represented the Tribe; and,

(g) Doing or failing to do the things referred to sub paragraphs (a) through (f), above, in order to insure a continuance of compensation paid by the Tribe to the Defendants.

97. As a direct and proximate result of the breach by the Defendants, the Tribe has suffered the damages and injuries described above in Paragraph 84 and is further entitled to the remedies described above in Paragraph 84 described above.

98. Rather than tender the defense of the Moskow action to the Tribe's general liability insurance carrier, Kovall retained Defendants to represent the interests of the Tribe in the Moskow action. One of the reasons for Kovall doing this was because of the undisclosed and unauthorized arrangement Kovall had with Defendants, whereby he received compensation, benefits and kickbacks from these firms for referring business to them. Defendants agreed to this arrangement by which they compensated or provided benefits to Kovall and knew that the Tribe did not authorize or approve it. None of the Defendants disclosed this arrangement to the Tribe, nor did they ever obtain the consent of the Tribe to this arrangement.

99. In or about 2005, 2006 and 2007, while the Moskow action was active and pending, Kovall recommended to the Tribe that it enter into an agreement with its general liability insurance carrier "commuting" the coverage it had with the general liability carrier, whereby, in effect, the Tribe would be paid by the general liability carrier to cancel its

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general liability insurance coverage with the carrier. Kovall represented the Tribe in connection with its agreement to "commute" its general liability coverage. During these negotiations with the Tribe's general liability insurance carrier, Kovall did not disclose to the Tribe that it had a basis for coverage for the Moskow action under its policy with its general liability carrier, nor did he disclose that by "commuting" its coverage with its general liability carrier, it could lose its right to seek coverage for the claims made by the Moskows in the Moskow action or that it would have to pay more in costs of defending that action. Part of the reason Kovall did not disclose these facts to the Tribe was his undisclosed and unauthorized arrangement with M & P and F & P, whereby he received compensation, benefits and/or kickbacks from M & P and F & P for business that he referred to them. M & P and F & P knew that the Tribe was commuting its general liability coverage as described above and knew or should have known the financial ramifications of such action for the Tribe, yet neither M & P nor F & P disclosed to or advised the Tribe not to do so. Part of the reason for not doing so was the fact that M & P and F & P wanted to continue to represent the Tribe in connection with the Moskow action, and because they knew or feared they would not be able to do so if the Tribe's insurance carrier was put on notice of the action and brought on other counsel to represent the Tribe in the Moskow action.

100. Kovall managed the defense of the Moskow action. In this capacity, he reviewed and approved the bills for the fees billed by Edwards, Rosette, M & P, F & P, FP & M and R & A, as well as the fees of other firms and experts and consultants for the Tribe, fees he was apparently sharing with these Defendants.

101. On information and belief, Kovall did so, in part, because of the financial arrangement he had with M & P, F & P and FP & M.

102. Neither Kovall, M & P, F & P nor FP & M ever disclosed to the Tribe the existence of the relationship between Kovall and them, nor did they disclose the benefit Kovall received from M & P, F & P and FP & M for referring business to them, nor did they

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ever obtain the written consent from the Tribe for the payments to Kovall. In fact, these Defendants took steps to conceal the existence of this arrangement from the Tribe. In addition, no disclosure was made by any such defendant of the potential risks of exposure to damages and defense costs that could result from the "commutation" of the general liability coverage the Tribe had.

103. In doing or failing to do the things described above, Defendants, and each of them, acted with malice, fraud or oppression as those terms are defined by California law by, among other things, knowingly and deliberately:

(a) Failing to properly assert the defense of Sovereign Immunity in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Failing to properly file a motion for summary judgment in the Moskow action so that such motion was denied on procedural grounds;

(c) Failing to properly tender the defense of the Moskow action, as prohibited by the Rules of Professional Conduct, Rule 3-110;

(d) Failing to conduct sufficient and adequate discovery in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(e) Employing and/or using consultants and experts in the defense of the Moskow action, such as Shambaugh and Bardos, who had conflicts of interest or were otherwise subject to claims of bias and impropriety as prohibited by the Rules of Professional Conduct, Rule 3-110;

(f) Failing to disclose conflicts of interest as described in Paragraphs 98-102, above as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500, by, among other things, providing Kovall

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with benefits and/or a portion of the fees paid by the Tribe to Defendants and/or by providing Kovall with kickbacks;

(g) Failing to obtain the written informed consent from the Tribe to the conflicts and secret benefits described in Paragraphs 98-102, above;

(h) Failing to properly supervise attorneys who were not licensed to practice in California and/or who were unfamiliar with California Court rules as they relate to litigation and Local Rules as described above in Paragraph 37 as prohibited by the Rules of Professional Conduct, Rule 1-300;

(i) Failing to supervise other attorneys, consultants, experts, vendors; and, billing the Tribe unconscionable fees and lost for valuable legal services, as prohibited by the Rules of Professional Conduct, Rule 4-200;

(j) Failing to supervise other attorneys, consultants, experts, vendors; and,

(k) Failing to put Plaintiffs interests ahead of his own in all matters in connection with which Kovall represented the Plaintiffs.

Accordingly, in addition to any other relief awarded to the Tribe against the Defendants, the Tribe is are entitled to the imposition of punitive damages.

THIRTEENTH CAUSE OF ACTION FOR PROFESSIONAL NEGLIGENCE

(By the Tribe Against Rosette, R & A and Does 75 - 100)

104. The Tribe re-alleges and incorporates by reference paragraphs 1 through 39 as though fully set forth at length.

105. In or about May, 2008, the Tribe retained Rosette and R & A and Does 75 through 100 to represent its interests in the Moskow action and also in connection with

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other legal matters other than the Moskow action, and Defendants agreed to and did assume the representation of the Tribe in the Moskow action and in connection with certain other matters pursuant to an oral agreement.

106. On information and belief, the defendants named in this cause of action, negligently represented the Tribe, and/or negligently handled litigation for the Tribe, and/or negligently negotiated agreements for the Tribe, and/or negligently prepared agreements and documents for the Tribe, and/or negligently supervised agents, representatives and/or employees of the Tribe by, among other things:

(a) Failing to properly assert the defense of Sovereign Immunity in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Failing to properly file a motion for summary judgment in the Moskow action so that such motion was denied on procedural grounds;

(c) Failing to properly tender the defense of the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(d) Failing to conduct sufficient and adequate discovery in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(e) Employing and/or using consultants and experts in the defense of the Moskow action, such as Shambaugh and Bardos, who had conflicts of interest or were otherwise subject to claims of bias and impropriety as prohibited by the Rules of Professional Conduct, Rule 3-110;

(f) Failing to disclose conflicts of interest as described in Paragraphs 22-26, as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500, by, among other things, providing Kovall with

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benefits and/or a portion of the fees paid by the Tribe to Defendants and/or by providing Kovall with kickbacks;

(g) Failing to obtain a written informed consent from the Tribe to the conflicts and secret benefits, above;

(h) Failing to properly supervise attorneys who were not licensed to practice in California and/or who were unfamiliar with California Court rules as they relate to litigation and Local Rules as described above in Paragraph 37 as prohibited by the Rules of Professional Conduct, Rule 1-300;

(i) Failing to supervise other attorneys, consultants, experts, vendors;

(j) Billing the Tribe unconscionable fees and costs for valueless legal services, as prohibited by the Rules of Professional Conduct, Rule 4-200;

(k) Failing to discover and/or disclose to the Tribe the relationship that existed between Kovall and Shambaugh in connection with the work Defendants did for the Tribe relating to the 47 acres; and,

(l) Failing to discover and/or disclose to the Tribe the ownership interest Kovall had in the Emerald Solar transaction.

107. On information and belief, the Tribe alleges that there are other instances in which Defendants negligently represented the interests of the Tribe of which the Tribe is not aware at this time.

108. The Tribe's agreement with the Defendants for representation of the Tribe in connection with the matters described above was initially verbal, except that Defendants submitted written invoices for the services Defendants provided and the Tribe paid those invoices. Later, in or about September, 2009, Defendants entered into a written legal

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services agreement with the Tribe covering at least some of the services they provided to the Tribe. Exhibit "A", hereto, is a copy of that document.

109. As a direct and proximate breach by the Defendants, Plaintiffs have suffered the damages and injuries and are further entitled to the remedies described below. As described above, the Tribe has suffered additional damages and injuries related to amounts which it paid Defendants in connection with certain purported experts and consultants in the Moskow action. Further, the Tribe has paid these Defendants fees for this negligent and wrongful work which each Defendant should return to the Tribe, together with all amounts paid to them and interest. And, as a further direct and proximate result of the wrongful conduct of these Defendants, as described above, the Tribe has incurred and continues to incur expenses, including, without limitation, legal fees, to extricate itself from the legal problems brought about by these Defendants and their wrongful conduct. In addition, and without limitation, these Defendants failed to disclose the existence of the relationship Kovall had with them or that he was receiving anything of value from these attorneys for having referred the representation of the Tribe to them and without obtaining the Tribe's informed, written consent to such arrangement. The precise amount of damages caused by the conduct of the Defendants is presently unknown but exceeds the jurisdictional minimum of the Court.

FOURTEENTH CAUSE OF ACTION FOR BREACH OF CONTRACT

(By the Tribe Against Rosette, R & A and Does 75 - 100)

110. The Tribe re-alleges and incorporate by reference paragraphs 1 through 39 and Paragraphs 104 through 109, above, as though fully set forth at length.

111. In doing or failing to do the things described, the Defendants breached the agreements they had with the Plaintiffs, together with obligations imposed by law by, among other things:

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(a) Failing to properly assert the defense of Sovereign Immunity in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Failing to properly file a motion for summary judgment in the Moskow action so that such motion was denied on procedural grounds;

(c) Failing to properly tender the defense of the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(d) Failing to conduct sufficient and adequate discovery in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(e) Employing and/or using consultants and experts in the defense of the Moskow action, such as Shambaugh and Bardos, who had conflicts of interest or were otherwise subject to claims of bias and impropriety as prohibited by the Rules of Professional Conduct, Rule 3-110;

(f) Failing to disclose conflicts of interest as described in Paragraphs 22-26, as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500, by, among other things, providing Kovall with benefits and/or a portion of the fees paid by the Tribe to Defendants and/or by providing Kovall with kickbacks;

(g) Failing to obtain a written informed consent from the Tribe to the conflicts and secret benefits;

(h) Failing to properly supervise attorneys who were not licensed to practice in California and/or who were unfamiliar with California Court rules as they relate to litigation and Local Rules as described above in Paragraph 37 and as prohibited by the Rules of Professional Conduct, Rule 1-300;

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(i) Failing to supervise other attorneys, consultants, experts, vendors;

(j) Billing the Tribe unconscionable fees and costs for valueless legal services, as prohibited by the Rules of Professional Conduct, Rule 4-200;

(k) Failing to discover and/or disclose to the Tribe the relationship that existed between Kovall and Shambaugh in connection with the work Defendants did for the Tribe relating to the 47 acres; and,

(l) Failing to discover and/or disclose to the Tribe the ownership interest Kovall had in the Emerald Solar transaction.

112. On information and belief, the Tribe alleges that Defendants have breached the agreements described above with the Tribe in other and further ways as to which Plaintiffs are not yet aware.

113. As a direct and proximate breach by the Defendants, the Tribe has suffered the damages and injuries described above and is further entitled to the remedies described above.

FIFTHTEENTH CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(By the Tribe Against Rosette, R & A and Does 75 – 100)

114. The Tribe re-alleges and incorporate by reference paragraphs 1 through 39 and 111 through 113 as though fully set forth at length.

115. In every contract entered into or to be performed in this State, there is an implied covenant of good faith and fair dealing which requires each of the parties to the contract to take no action to prevent the other party to the contract from realizing the benefit of same.

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116. In doing the things described above, the Defendants breached the covenant of good faith and fair dealing by, among other things:

(a) Failing to properly assert the defense of Sovereign Immunity in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Failing to properly file a motion for summary judgment in the Moskow action so that such motion was denied on procedural grounds;

(c) Failing to properly tender the defense of the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(d) Failing to conduct sufficient and adequate discovery in the Moskow action as prohibited by the Rules of Professional Conduct, Rule 3-110;

(e) Employing and/or using consultants and experts in the defense of the Moskow action, such as Shambaugh and Bardos, who had conflicts of interest or were otherwise subject to claims of bias and impropriety, as prohibited by the Rules of Professional Conduct, Rule 3-110;

(f) Failing to disclose conflicts of interest as described in Paragraphs 22-26, as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500, by, among other things, providing Kovall with benefits and/or a portion of the fees paid by the Tribe to Defendants and/or by providing Kovall with kickbacks;

(g) Failing to obtain a written informed consent from the Tribe to the conflicts and secret benefits;

(h) Failing to properly supervise attorneys who were not licensed to practice in California and/or who were unfamiliar with California Court rules as they relate to litigation and Local Rules as described above in

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Paragraph 37 , as prohibited by the Rules of Professional Conduct, Rule 1-300;

(i) Failing to supervise other attorneys, consultants, experts, vendors;

(j) Billing the Tribe unconscionable fees and costs for valueless legal services, as prohibited by the Rules of Professional Conduct, Rule 4-200;

(k) Failing to discover and/or disclose to the Tribe the relationship that existed between Kovall and Shambaugh in connection with the work Defendants did for the Tribe relating to the 47 acres; and,

(l) Failing to discover and/or disclose to the Tribe the ownership interest Kovall had in the Emerald Solar transaction.

117. To the extent that they do not represent breaches of express contract, Defendants, by doing or failing to do these things, nonetheless prevented the Tribe from realizing the benefits of the contract, and thwarted the Tribe's reasonable expectation that the Defendants would perform services for it competently; that they would fully and adequately supervise the attorneys who were associated with them; that they would not provide Kovall with unauthorized benefits and kickbacks so as to induce him to provide them with more work at the expense of the Tribe; and, that they would not utilize the services of attorneys who were not admitted to practice in California and/or who were unfamiliar with California and State Court procedures. On information and belief, the Tribe alleges Defendants have breached the implied covenant of good faith and fair dealing with Plaintiffs in other and further ways as to which the Tribe is not yet aware.

118. On information and belief, the Tribe alleges Defendants have breached the implied covenant of good faith and fair dealing with Plaintiffs in other and further ways as to which the Tribe is not yet aware.

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119. As a direct and proximate result of the breach by the Defendants, the Tribe has suffered the damages and injuries described above in Paragraphs 109 and is further entitled to the remedies described above in Paragraphs 109 described above.

SIXTEENTH CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY

(By the Tribe Against Rosette, R & A and Does 75 - 100)

120. The Tribe re-alleges and incorporates here by this reference paragraphs 1 through 39 and 114 through 119 as though fully set forth at length.

121. Given their position as attorneys and given the nature of the services they provided to the Tribe for which the Tribe paid the Defendants, the Defendants occupied a position in their dealings with the Tribe as fiduciaries.

122. In doing the things described above, the Defendants breached their fiduciary duties to Plaintiffs by, among other things:

(a) Employing and/or using consultants and experts in the defense of the Moskow action, such as Shambaugh and Bardos, who had conflicts of interest or were otherwise subject to claims of bias and impropriety, as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Providing Kovall with benefits and/or a portion of the fees paid by the Tribe to Defendants and/or by providing Kovall with kickbacks, knowing that Kovall was responsible for making recommendations to hire them and for reviewing and approving their bills for services and by failing to disclose this conflict of interest as described in Paragraphs 22-26, as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500, by, among other things;

(c) Failing to obtain a written informed consent from the Tribe to the conflicts and secret benefits;

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(d) Failing to properly supervise attorneys who were not licensed to practice in California and/or who were unfamiliar with California Court rules as they relate to litigation and Local Rules as described above in Paragraph 37 and as prohibited by the Rules of Professional Conduct, Rule 1-300; and by misrepresenting to the Tribe that these attorneys were fully competent to handle the Tribe's legal affairs in actions in California;

(e) Failing to supervise other attorneys, consultants, experts, vendors; and,

(f) Failing to put Plaintiffs interests ahead of his own in all matters in connection with which Kovall represented the Plaintiffs.

123. As a direct and proximate result of the breach by the Defendants, the Tribe has suffered the damages and injuries described above in Paragraph 109 and is further entitled to the remedies described above in Paragraph 109 described above.

124. In addition, rather than tender the defense of the Moskow action to the Tribe's general liability insurance carrier, Kovall retained Defendants to represent the interests of the Tribe in the Moskow action. One of the reasons for Kovall doing this was because of the undisclosed and unauthorized arrangement Kovall had with Defendants, whereby he received compensation, benefits and kickbacks from these firms for referring business to them. Defendants agreed to this arrangement by which they compensated or provided benefits to Kovall and knew that the Tribe did not authorize or approve it. None of the Defendants disclosed this arrangement to the Tribe nor did they ever obtain the consent of the Tribe to this arrangement.

125. Kovall managed the defense of the Moskow action. In this capacity, he reviewed and approved the bills for the fees billed by Defendants, as well as the fees of other firms and experts and consultants for the Tribe, fees he was apparently sharing with these Defendants.

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126. On information and belief, Kovall did so, in part, because of the financial arrangement he had with Defendants.

127. Neither Kovall or the Defendants ever disclosed to the Tribe the existence of the relationship between Kovall and them, nor did they disclose the benefit Kovall received from Defendants for referring business to them, nor did they ever obtain the written consent from the Tribe for this conduct. In fact, these Defendants took steps to conceal the existence of this arrangement from the Tribe.

128. In doing or failing to do the things described above, Defendants, and each of them, acted with malice, fraud or oppression as those terms are defined by California law by, among other things, knowingly and deliberately:

(a) Employing and/or using consultants and experts in the defense of the Moskow action, such as Shambaugh and Bardos, who had conflicts of interest or were otherwise subject to claims of bias and impropriety, as prohibited by the Rules of Professional Conduct, Rule 3-110;

(b) Providing Kovall with benefits and/or a portion of the fees paid by the Tribe to Defendants and/or by providing Kovall with kickbacks, knowing that Kovall was responsible for making recommendations to hire them and for reviewing and approving their bills for services and by failing to disclose this conflict of interest as described in Paragraphs 22-26, as prohibited by the Rules of Professional Conduct, Rules 4-200 and 3-500, by, among other things;

(c) Failing to obtain a written informed consent from the Tribe to the conflicts and secret benefits;

(d) Utilizing attorneys who were not licensed to practice in California and/or who were unfamiliar with California Court rules as they relate to litigation and Local Rules of Professional Conduct, Rule 1-300;

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and by misrepresenting to the Tribe that these attorneys were fully competent to handled the Tribe's legal affairs in actions in California;

(e) Billing the Tribe amounts for services and costs which were unconscionable given the matters identified in subparagraphs (a) through (d), above; and,

(f) Concealing the matters described in subparagraphs (a) through (d), above.

Accordingly, in addition to any other relief awarded to the Tribe against the Defendants, the Tribe is entitled to the imposition of punitive damages.

WHEREFORE, Plaintiffs pray for relief as follows:

On the First Cause of Action by All Plaintiffs for Professional Negligence against Kovall and Does 1 through 50:

1. For compensatory damages in an amount according to proof;

2. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

3. For an order imposing a constructive trust;

On the Second Cause of Action by All Plaintiffs for Breach of Contract against Kovall and Does 1 through 50:

4. For compensatory damages in an amount according to proof;

5. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

6. For an order imposing a constructive trust;

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On the Third Cause of Action by All Plaintiffs for Breach of Implied Contract of Good Faith and Fair Dealing against Kovall and Does 1 through 50:

7. For compensatory damages in an amount according to proof;

8. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

9. For an order imposing a constructive trust;

On the Fourth Cause of Action by All Plaintiffs for Breach of Fiduciary Duty against Kovall and Does 1 through 50:

10. For compensatory damages in an amount according to proof;

11. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

12. For an order imposing a constructive trust;

13. For punitive and exemplary damages, according to proof;

On the Fifth Cause of Action by the Tribe for Professional Negligence against Edwards and Does 51 through 61:

14. For compensatory damages in an amount according to proof;

15. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

16. For an order imposing a constructive trust;

On the Sixth Cause of Action by the Tribe for Breach of Contract against Edwards and Does 51 through 61:

17. For compensatory damages in an amount according to proof;

18. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

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19. For an order imposing a constructive trust;

On the Seventh Cause of Action by the Tribe for Breach of Implied Contract of Good Faith and Fair Dealing against Edwards and Does 51 through 61:

20. For compensatory damages in an amount according to proof;

21. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

22. For an order imposing a constructive trust;

On the Eighth Cause of Action by the Tribe for Breach of Fiduciary Duty against Edwards and Does 51 through 61:

23. For compensatory damages in an amount according to proof;

24. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

25. For an order imposing a constructive trust;

On the Ninth Cause of Action by the Tribe for Professional Negligence against M & P, R & A, F & P, FP & M and Does 62 through 74:

26. For compensatory damages in an amount according to proof;

27. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

28. For an order imposing a constructive trust;

On the Tenth Cause of Action by the Tribe for Breach of Contract against M & P, R & A, F & P, FP & M and Does 62 through 74:

29. For compensatory damages in an amount according to proof;

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30. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

31. For an order imposing a constructive trust;

On the Eleventh Cause of Action by the Tribe for Breach of Implied Contract of Good Faith and Fair Dealing against M & P, R & A, F & P, FP & M and Does 51 through 61:

32. For compensatory damages in an amount according to proof;

33. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

34. For an order imposing a constructive trust;

On the Twelfth Cause of Action by the Tribe for Breach of Fiduciary Duty against M & P, R & A, F & P, FP & M and Does 61 through 75:

35. For compensatory damages in an amount according to proof;

36. For punitive and exemplary damages according to proof;

37. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

38. For an order imposing a constructive trust;

On the Thirteenth Cause of Action by the Tribe for Professional Negligence against Rosette, R & A and Does 75 through 100:

39. For compensatory damages in an amount according to proof;

40. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

41. For an order imposing a constructive trust;

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On the Fourteenth Cause of Action by the Tribe for Breach of Contract against Rosette, R & A and Does 75 through 100:

42. For compensatory damages in an amount according to proof;

43. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

44. For an order imposing a constructive trust;

On the Fifteenth Cause of Action by the Tribe for Breach of Implied Contract of Good Faith and Fair Dealing against Rosette, R & A and Does 75 through 100:

45. For compensatory damages in an amount according to proof;

46. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

47. For an order imposing a constructive trust;

On the Sixteenth Cause of Action by the Tribe for Breach of Fiduciary Duty against Rosette, R & A and Does 75 through 100:

48. For compensatory damages in an amount according to proof;

49. For punitive and exemplary damages according to proof

50. For orders requiring restitution and a disgorgement of all profits, benefits and other compensation obtained as a result of the conduct alleged herein;

51. For an order imposing a constructive trust;

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On All Causes of Action by All Plaintiffs Against All Defendants:

52. For costs of suit;

53. For interest at the maximum allowable by law;

54. For such other and further relief as the Court deems just and proper.

PLAINTIFFS HEREBY DEMAND A TRIAL OF THEIR COMPLAINT BY JURY.

Dated: February 3, 2010

SPOLIN SILVERMAN COHEN & BOSSERMAN LLP

By: _____

GORDON E. BOSSERMAN
Attorneys for Plaintiffs
TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA, TWENTY-NINE PALMS ENTERPRISES CORPORATION, and ECHO TRAIL HOLDINGS, LLC

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PROOF OF SERVICE

Twenty-Nine Palms v. Edwards, Case No. 30-2009 00311045

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 100 Wilshire Boulevard, Suite 1400, Santa Monica, CA 90401.

On February 3, 2010, I served the foregoing document described as: **FIRST AMENDED COMPLAINT FOR: (1) PROFESSIONAL NEGLIGENCE; (2) BREACH OF CONTRACT; (3) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; (4) BREACH OF FIDUCIARY DUTY; (5) PROFESSIONAL NEGLIGENCE; (6) BREACH OF CONTRACT; (7) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; (8) BREACH OF FIDUCIARY DUTY; (9) PROFESSIONAL NEGLIGENCE; (10) BREACH OF CONTRACT; (11) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; (12) BREACH OF FIDUCIARY DUTY; (13) PROFESSIONAL NEGLIGENCE; (14) BREACH OF CONTRACT; (15) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; and, (16) FIDUCIARY DUTY** on the interested parties in this action as stated in the attached mailing list.

☒ Depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.

☒ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice is would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Santa Monica, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit. Executed on February 3, 2010, at Santa Monica, California.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

MIRANDA NICHOLS

Service List

Case No. 30-2009 00311045

Alan H. Schonfeld
Schonfeld, Bertsche, Preciado & Mahady, LLP
402 West Broadway, Suite 1890
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Attorney for Nada Edwards

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1960 East Grand Avenue
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Attorney for Rosette

John W. Sheller
Wendy Wen Yun Chang
Hinshaw & Culbertson LLP
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Attorneys for Defendants Fredericks Peebles & Morgan LLP, Fredericks & Peebles LLP, and Monteau & Peebles LLP

Bartley Louis Becker
Lewis Brisbois Bisgaard & Smith LLP
221 North Figueroa Street
Suite 1200
Los Angeles, CA 90012-2601

Attorney for Kovall

SPOLIN SILVERMAN COHEN & BOSSERMAN LLP
100 Wilshire Boulevard, Suite 1400
Santa Monica, CA 90401
(310) 586-2400

EXHIBIT A

ATTORNEY SERVICES AGREEMENT

THIS AGREEMENT is made and entered into between the Twenty-Nine Palms Band of Mission Indians. ("Client") and the law firm ROSETTE & ASSOCIATES. PC ("Counsel").

1. **SCOPE OF SERVICES.** Counsel shall provide legal representation to Client including legal review, advice and representation on any legal assignments directly provided by the Tribal Council of the Client which may consist of researching and drafting legal memoranda, attending Council meetings, negotiations or any administrative or court hearings, or reviewing and amending contracts, and/or leases.

2. **STAFFING.** Counsel will have primary responsibility for the matter. However, Counsel may engage or utilize other lawyers, paralegals, and litigation clerical assistants from other law firms where appropriate. Staffing decisions will be made by Counsel, with the objective of rendering services on an efficient and cost-effective basis.

3. **TERM.** The term of this Agreement shall begin on the date hereof and shall continue until terminated pursuant to the provisions set forth herein.

4. **COMPENSATION.** Counsel shall be compensated in accordance with the schedule below:

Attorney $275.00
Paralegal/Law Clerk. . . . . $ 85.00

5. **COSTS.** In addition to the fees set forth above, the Client will be responsible for all out-of-pocket disbursements that Counsel incurs on Client's behalf. Typical of such costs are mileage/travel expenses including meals and hotel, long-distance telephone calls, fax charges, postal charges, courier services, delivery charges, photocopying and online database retrieval charges (Lexis, etc.). Counsel anticipates making advances to cover out-of-pocket costs incurred and Counsel will be reimbursed for such costs.

6. **INVOICES.** Counsel shall prepare statements for services rendered and costs incurred and send to the Client's address on file during the month following the month in which services are rendered. Counsel will make every effort to include Counsel's out-of-pocket disbursements in the next monthly statement. However, some disbursements are not immediately available to Counsel; and, as a result, may not appear on a statement until sometime after the charges were actually incurred.

7. **ASSIGNMENT.** Neither this Agreement, nor any obligation of Counsel hereunder, shall be assigned in whole or in part by Counsel without the prior written consent of the Client.

8. **TERMINATION.** Either Counsel or Client may terminate the engagement at any time for any reason by written notice, subject on Counsel's part to applicable rules of professional conduct. Some examples of reasons for termination include, but are not limited to,

Client's failure to cooperate with Counsel or any request by Client that would require Counsel to violate the Code of Professional Responsibility. In the event that Counsel terminates the engagement, Counsel will take such steps as are reasonably practicable to protect Client's interest in this matter and, if Client so requests, Counsel will suggest to Client possible successor counsel and provide successor counsel of Client's choosing with whatever papers Client has provided to Counsel. Client is engaging Counsel to provide legal services in connection with a specific matter. After completion of the matter, changes may occur in laws or regulations that are applicable to Client that could have an impact upon Client's future rights and liabilities. Unless Client continues to engage Counsel to provide additional advice, the Counsel shall have no continuing obligation to advise Client with respect to future legal developments.

9. **COUNTERPARTS.** This Agreement may be executed in one or more counterpart copies. Each counterpart copy shall constitute an agreement and all of the counterpart copies shall constitute one fully executed agreement. This Agreement may be executed on facsimile counterparts. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date and year written herein.

TWENTY-NINE PALMS BAND OF MISSION INDIANS

By Darryl Mike _____ 9/4/08
Darryl Mike, Tribal Chairman Date

ROSETTE & ASSOCIATES, PC

By _____ _____
Robert A. Rosette Date

SUMMONS ON FIRST AMENDED (CITACION JUDICIAL) COMPLAINT

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: NADA L. EDWARDS, an individual, **(AVISO AL DEMANDADO):** GARY E. KOVALL, an individual, ROBERT A. ROSETTE, an individual, ROSETTE & ASSOCIATES PC, a professional corporation, MONTEAU & PEEBLES LLP, a partnership, FREDERICKS & PEEBLES, LLP, a partnership, FREDERICKS PEEBLES & MORGAN LLP, a partnership, and DOES 1 through 100.

YOU ARE BEING SUED BY PLAINTIFF: TWENTY-NINE PALMS BAND **(LO ESTÁ DEMANDANDO EL DEMANDANTE):** OF MISSION INDIANS OF CALIFORNIA; TWENTY-NINE PALMS ENTERPRISES CORPORATION; and ECHO TRAIL HOLDINGS, LLC, a limited liability company.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. *¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
ORANGE COUNTY SUPERIOR COURT
700 CIVIC CENTER DRIVE

WEST SANTA ANA 92701

CASE NUMBER:
(Número del Caso):
30-2009 00311045

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
GORDON BOSSERMAN, SBN 65259 310-586-2400 310-586-2444
SPOLIN SILVERMAN & COHEN LLP
100 WILSHIRE BLVD., SUITE 1400
SANTA MONICA, CALIFORNIA 90401

DATE: *(Fecha)* Clerk, by _____ *(Secretario)*, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify):*
4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Legal Solutions Plus

Code of Civil Procedure §§ 412.20, 465

EXHIBIT B

SCOTT J. SPOLIN, SBN 48724
GORDON E. BOSSERMAN, SBN 65259
SPOLIN SILVERMAN, COHEN & BOSSERMAN LLP
100 Wilshire Boulevard, Suite 1400
Santa Monica, California 90401
Tel.: (310) 586-2400
Fax: (310) 586-2444

Attorneys for Plaintiffs TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA; TWENTY-NINE PALMS ENTERPRISES CORPORATION; and ECHO TRAIL HOLDINGS, INC., a limited liability company

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA; TWENTY-NINE PALMS ENTERPRISES CORPORATION; and ECHO TRAIL HOLDINGS, INC., a limited liability company,

Plaintiffs,

vs.

NADA L. EDWARDS, an individual; GARY E. KOVALL, an individual; ROBERT A. ROSETTE, an individual; ROSETTE & ASSOCIATES PC, a professional corporation; MONTEAU & PEEBLES LLP, a partnership; FREDERICKS & PEEBLES, LLP, a partnership; FREDERICKS PEEBLES & MORGAN LLP., a partnership; and Does 1 through 100, inclusive,

Defendants.

Case No. 30-2009 00311045
Honorable David C. Velasquez

(1) MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO TRANSFER ACTION;

(2) DECLARATION OF GORDON E. BOSSERMAN;

(3) DECLARATION OF JOE MARINKO; and

(4) DECLARATION OF TRACEY D. ALLEN

[Evidentiary Objections to Declarations In Support of Motion To Transfer Venue Submitted Contemporaneously Herewith]

Date Action Filed: October 13, 2009

Hearing date: May 13, 2010
Hearing time: 1: 30 p.m.
Place: Dept. CX101

Discovery Cutoff: None
Motion Cutoff: None
Trial Date: None

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SPOLIN SILVERMAN & COHEN LLP
100 Wil... vulevard, Suite 1400
Sa... ca, CA 90401
...1586-2400

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SPOLIN SILVERMAN COHEN & BOSSERMAN LLP
100 Wilshire Boulevard, Suite 1400
Santa Monica, CA 90401
(310) 586-2400

TABLE OF AUTHORITIES

CASES **PAGE NO.**

STATUTES

SPOLIN SILVERMAN & COHEN LLP
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Sa ica, CA 90401
586-2400

INTRODUCTION

The Motion to Transfer this action to Riverside County ("Transfer Motion") is ill-conceived and unmeritorious. Contrary to the basic premise of the Transfer Motion, the gravamen of this action is not the 47 acres transaction. Rather, it is the self-dealing, professional malpractice and breaches of fiduciary duty by a variety of defendant-professionals, none of whom (other than Kovall himself)[1] live or have offices in Riverside County, relating to at least seven other transactions or events situated around the State of California. In addition, even as to the one transaction identified in the Transfer Motion, i.e. plaintiffs' acquisition of the 47 acres, the moving party only highlights the impropriety of the motion by relying on witnesses that are logically immaterial to the disputed issues, have admitted they know little or nothing about the transaction, or are duplicative, and on the ludicrous suggestion that the jury will somehow need to examine the undeveloped desert property involved in that transaction. Accordingly, and as will be discussed more fully below, the Transfer Motion should be denied and the action should be permitted to proceed without further delay.

STATEMENT OF FACTS

A. The Nature Of This Action, And Plaintiffs' Claims Against Kovall.

Plaintiffs are a sovereign Native American nation and their wholly owned entities. Beginning in 1997, Kovall, an attorney, began representing plaintiffs, eventually acting as the Tribe's general counsel. In that capacity, he represented the Tribe with respect to a variety of matters, including real estate investment and construction, as well as representing the Tribe with respect to mediations, litigations, and political matters affecting the Tribe's business operations. (First Amended Complaint ["FAC"], ¶ 11). Plaintiffs' claims focus on the payment of improper kickbacks and defendants' failures to competently perform their legal duties as to the matters in which they were retained to represent the Tribe, including

[1] The convenience of the parties to the action is not to be considered in such a motion. See Argument, Section B, below.

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the following:

- **The Total Tire Venture,** a "recycling" venture near Sacramento, in which the Tribe, based on the recommendations of Kovall and others, ultimately invested -- and lost -- over $6.5 million. Unbeknownst to the Tribe, Kovall and others, including David Alan Heslop, a resident of San Luis Obispo County, acquired an ownership interest in the venture without investing any of their own money, and forced the Tribe to take all of the financial risk. (FAC, ¶ 13; Declaration of Gordon E. Bosserman ["Bosserman declaration"], ¶ 5).
- **Paul P. Bardos**, owner of various construction companies and a resident of San Bernardino County with wrongful ties to David Alan Helsop, a resident of San Luis Obispo County, who along with Kovall, recommended Bardos for various construction projects involving the Tribe without revealing (and, indeed, concealing) that Bardos had compensated Kovall, either directly or through Heslop, for doing so. (FAC, ¶¶ 14-16; Bosserman declaration, ¶ 6).
- **The Moskow action** consisted of litigation arising out of the 2003 sale by the Tribe of a house in Laguna Beach to Dr. and Mrs. Lonnie J. Moskow, residents of Orange County. In June 2004 the Moskows filed a construction defect and personal injury action before the Honorable Gail Andler of this Court, based on among other things alleged exposure to mold. Kovall retained the remaining defendant attorneys to represent the Tribe in the action; however, the attorneys failed to tender the action to the Tribe's insurer and negligently represented the Tribe in various respects, including using consultants and experts (including Peggy Shambaugh, then Kovall's girlfriend and now his wife and Bardos) who had conflicts of interest or were subject to claims of bias and conflict. These other attorney-defendants have offices in California in the Counties of either Orange, San Francisco or Sacramento. None of them, however, have offices in Riverside. County. (FAC, ¶¶ 17-21, 37; Bosserman declaration, ¶ 7).
- **Kickbacks.** At the time Kovall retained the remaining defendants on behalf of the

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San[illegible]a, CA 90401
[illegible]586-2400

Tribe, he had agreements with at least the Peebles and Rosette defendants, by which he received "kickbacks" or some other form of benefit based on the referral of business (such as the defense of the Moskow action). Kovall concealed those agreements from the Tribe. (FAC, ¶¶ 22-25); Again, non party witnesses related to these firms worked out of these firms' offices in San Francisco or Sacramento. (Bosserman declaration, ¶ 12 and 13).

- A series of **Insurance Commutation Agreements**, in which Kovall recommended that the Tribe enter into agreements with its general liability insurance carrier "commuting" (or, in effect, canceling) the coverage it had for claims arising in those years, which caused the Tribe to lose coverage for the defense of the Moskow action. (FAC, ¶ 27).
- **The 47 Acres Transaction,** in which Kovall represented the Tribe with respect to the acquisition of approximately 47 acres of real property known as "Echo Trail," located in Coachella, near the Tribe's casino. Kovall persuaded the Tribe to utilize his girlfriend (and now wife) Peggy Shambaugh ("Shambaugh") as its realtor in the transaction while concealing his relationship with her. The two negotiated an artificially high sales price for the property, to generate the highest possible commission for Shambaugh (and Kovall) and her employer (Windermere), who provided little or no actual services in connection with the purchase. (FAC, ¶¶ 28-34).
- **Emerald Solar.** In 2007 and 2008, Kovall attempted to get the Tribe to invest in a solar project, without disclosing that he had an ownership interest in one or both of the entities that would be part of this venture or obtaining the consent of the Tribe. Ultimately, the Tribe invested thousands of dollars in legal services paid to Kovall and certain of the other defendants related to the project with the attorneys hand-picked by Kovall. Michael Derry, Kovall's co-owner in these ventures, resides in Ukiah (Placer County). (FAC, ¶ 36; Bosserman declaration, ¶ 8).

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ARGUMENT

THIS COURT SHOULD DENY THE MOTION TO TRANSFER, BECAUSE KOVALL CANNOT MEET HIS BURDEN TO SHOW BOTH THAT THE CONVENIENCE OF WITNESSES AND THE ENDS OF JUSTICE JUSTIFY THE REQUESTED TRANSFER.

In addition to the fact that Kovall has impermissibly delayed bringing this motion, Kovall's arguments are based on a selective and distorted characterization of this case. In particular, Kovall acts as if he were the sole defendant in the case; as if the 47 acres transaction constituted the sole basis for the claims against him; as if every person marginally involved in that one transaction will be a trial witness in this case; and, as if the courthouse in Riverside (to which Kovall seeks to have this action transferred) were some sort of magical transit hub that would serve the interests of all the far-flung witnesses involved in this action. However, because none of these are the case, there is no basis for disturbing plaintiffs' choice of venue, or for Kovall's present motion.

A. A Change Of Venue May Be Granted Only When The Moving Party Affirmatively Establishes Both That The Convenience Of Witnesses And The Ends Of Justice Will Be Served By Such A Change.

The basic venue statute, Cal. Code Civ. Proc. § 395(a), provides in pertinent part that "the superior court in the county in which the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action." Here, it is undisputed that defendant Edwards resides and practices law in Orange County. (See FAC, ¶ 3). That provision is subject to the trial court's authority under Cal. Code Civ. Proc. § 397(c) to transfer an action "[w]hen the convenience of the witnesses and the ends of justice would be promoted by the change." However, because a plaintiff's choice of venue is presumptively correct, the burden is on the party seeking transfer to establish that the statutory grounds exist (Lieberman v. Superior Court, 194 Cal.App.3d 396, 401 (1987); Pesses v. Superior Court, 107 Cal.App.3d 117, 124 (1980)), and the strength of that showing, rather than the weakness if any of the opposition, determines whether to change venue. (Chaffin Constr. Co. v. Maleville Bros., 155 Cal.App.2d 660, 664 (1957); Union Trust Life Ins. Co. v. Superior Court, 259 Cal.App.2d 23, 28 (1968)). In exercising its

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authority under section 397(c), a court should consider not only the convenience of witnesses, but also the "ends of justice," which are equally essential. (Wirta v. Vergona, 155 Cal.App.2d 29, 32 (1957); Churchill v. White, 119 Cal.App.2d 503, 507 (1953)).

B. A Claim That A Change Of Venue Is Justified By The Convenience Of Witnesses Must Be Based On Detailed And Competent Evidence Showing That The Claimed Witnesses Are Material And Relevant, And Not Merely Duplicative - - That Showing Is Missing From The Transfer Motion.

With respect to a claim that an action should be transferred for the convenience of witnesses, the courts have established a number of principles to determine whether the moving party has met his or her burden, and whether the requested change of venue is, therefore, proper. Thus, for example, a mere numerical majority of affected witnesses on one side does not necessarily determine the proper location of the trial. (Figley v. California Arrow Airlines, 111 Cal.App.2d 285, 286 (1952); Wirta v. Vergona, supra, 155 Cal.App.2d at 32). Further, the party seeking to change venue must establish that the witnesses involved will testify as to relevant and material facts. (Harden, supra; see also Peiser v. Mettler, 50 Cal.2d 594, 607 (1958) ("Before the convenience of witnesses may be considered as a ground for an order granting a change of venue it must be shown that their proposed testimony is admissible, relevant and material to some issue in the case as shown by the record before this court"). Thus, to justify a change of venue based on the convenience of witnesses, the moving party must set forth not only the names of the witnesses, but also their expected testimony, and the reasons why the attendance of each would be inconvenient. (Peiser, supra, 50 Cal.2d at 607; see also Juneau v. Juneau, 45 Cal.App.2d 14, 16 (1941). Moreover, he or she must do so through competent evidence, i.e. through affidavits containing more than generalities and conclusions (Dillman v. Superior Court, 205 Cal.App.2d 769, 773 (1962); Baird v. Smith, 21 Cal.App.2d 221, 224 (1937)), and the court must disregard witnesses that are merely cumulative. (Harden, supra; see also DiGiorgio Fruit Corp. v. Zachary, 60 Cal.App.2d 560, 564 (1943); Corfee v. Southern California Edison Co., 202 Cal.App.2d 473, 477 (1962)). Neither the convenience of the parties or their employees nor that of expert witnesses are to be considered in determining

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whether to change venue. (Wood v. Silvers, 35 Cal.App.2d 604, 607 (1939)).

The courts have frequently applied the above principles to reject similar attempts by defendants to transfer venue for the purported convenience of witnesses. With respect to the issues of the showing required by the moving party, and in particular the importance of establishing that the "ends of justice" justify transfer, the court in Flanagan v. Flanagan, 175 Cal.App.2d 641 (1959), reversed a trial court order transferring venue in a divorce case from San Luis Obispo County (where the husband, a member of the armed forces, was stationed) to Los Angeles County. While mindful of the deferential standard of review (see Id. at 643), the court nonetheless held that that the wife's affidavits, which stated that transfer was "materially necessary" for "the proper proof of the material allegations" and that she otherwise "cannot safely proceed to trial" were too conclusory to support her claim regarding the convenience of witnesses; that the wife made no showing that the "ends of justice" would be served by the transfer, and that the trial court's order, therefore, constituted an abuse of discretion. (Id. at 642-46). Similarly, in Corfee v. Southern California Edison Co., 202 Cal.App.2d 473 (1962), the court held that a declaration in support of a proposed transfer which listed the names of twenty witnesses and contained a brief notation regarding the "Nature of Substance of Testimony" failed to contain sufficient detail, and failed to meet the moving party's burden, because it "[did] not reveal what the substances of their testimony would be and whether it would be favorable or unfavorable to appellants."[2] (Id. at 477-78; see also Union Trust Life Ins. Co. v. Superior Court, 259 Cal.App.2d 23, 28-29 (1968) (bare statement by a third party witness that he would be inconvenienced by being forced to travel to another county "by reason of his work and profession" was too conclusory and could not support transfer). And, with respect to the

[2] The court in Corfee also held that statements that witnesses could not attend trial in another county "without great loss of time from work or other activities and would be greatly inconvenienced thereby"; that a trial in the proposed other county would be shorter and less expensive; and that "a jury view of the premises [in that county] would promote the ends of justice" did not justify transfer, and that the statement that at least seven witnesses would testify regarding physical conditions at the time of the accident did not permit the trial court to do more than speculate as to whether the testimony of such witnesses was needlessly cumulative. (See 202 Cal.App.2d at 475-78).

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issue of the materiality and redundancy of witnesses, the defendants in Figley v. California Arrow Airlines, 111 Cal.App.2d 285 (1952), an airplane crash case, sought to transfer the action from Solano County, where the crash occurred, to Los Angeles County, where eight allegedly material witnesses, including six federal crash investigators, resided. The appellate court upheld the trial court's denial of the motion, stating that it reasonably concluded that only two witnesses -- not the eight designated by defendants -- would be necessary to establish the physical facts surrounding the crash, which were observed and could not reasonably be disputed. (Id. at 287).

C. Because Kovall's Motion To Transfer Is Untimely And Mischaracterizes The Claims Involved In This Action, The Witnesses Regarding Those Claims, And The Alleged Inconvenience Faced By Those Witnesses, Kovall Fails To Meet His Burden Of Justifying The Requested Transfer.

Applying the foregoing principles, it is evident that Kovall has not met and cannot meet his burden of justifying the transfer of this action to Riverside County.

1. Kovall has allowed the action to proceed and has delayed the hearing on the motion for over six months, and has stonewalled plaintiffs' attempt to move the action along through the improper assertion of the 5th Amendment privilege against self-incrimination.

Initially, this Court need not even reach the "merits" of Kovall's request, and should instead deny the motion on grounds that it is untimely. Although section 397 contains no express time limit, the courts have held that a motion to transfer must be made within a reasonable time after the answer is filed and/or the facts supporting transfer are known. (Thompson v. Superior Court, 26 Cal.App.3d 300, 306 (1972); Cooney v. Cooney, 25 Cal.2d 202, 208 (1944)). Here, Kovall waited nearly six months after being served with the complaint before seeking to transfer this action. Moreover, he did so only after (1) stonewalling plaintiffs on discovery by interposing improper blanket objections to each and every discovery request, no matter how innocuous; (2) waiting for the remaining defendants to file a series of demurrers, which have now been resolved; and (3) filing a motion to stay based on a purported criminal investigation and view of the 5th Amendment that are more imagined than real. As a result, Kovall's motion is untimely and represents pure gamesmanship. Similarly the Transfer Motion, if granted, would not further the "ends of

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justice."

2. Kovall ignores the fact that this case arises primarily out of the negligent representation of the Tribe in an action that not only concerned the sale of real property located in this County, but was filed and maintained not merely in this jurisdiction, but literally next door to this Court.

Should this Court elect to treat the motion on its "merits," it should nonetheless deny the requested transfer, because Kovall cannot establish that this case exclusively, or even predominantly, concerns claims involving third party witnesses located in Riverside County. Kovall's motion cynically and selectively focuses on a single transaction -- i.e. the 47 acres or Echo Trail transaction, involving land located in Riverside County -- the only transaction that could possibly support his motion.[3] In doing so, Kovall ignores not only the fact that plaintiffs' claims against him are based on at least seven separate acts of negligence or breach of contract or fiduciary duty (see section 3. infra), but the fact that the claims against each of the remaining defendants to this action arise not out of the 47 acres transaction, but relate primarily to breaches of fiduciary duty and other negligent and improper representation of the Tribe in the Moskow action. That action, in turn, not only involved the sale of real estate located in Orange County, but an action that was not both filed and resolved not only in this jurisdiction, but in the courtroom next door to this one, before the Honorable Gail Andler. Kovall nowhere explains why a legal malpractice action that involves the negligent handling of an Orange County lawsuit, and that, as shown in the Bosserman declaration, will involve the production of records located in this Court and the testimony of third party witnesses located in Orange County, should not be tried in this

[3] In his motion (p. 5:12-18) and the supporting Weatherup declaration (¶ 16), Kovall relies on the fact that the Superior Court in San Luis Obispo recently transferred a case brought by plaintiffs against Kovall's wife Shambaugh and others to Riverside County, going so far as to suggest that the two cases be transferred and consolidated. However, the present case differs markedly from the SLO/Riverside action, because: (1) the present action is brought exclusively against attorneys that represented the Tribe and is based on malpractice and other claims arising out of the attorney-client relationship (as opposed to the other action, which involves non-attorney advisers to the Tribe); (2) because the 47 acres (in which Shambaugh and her employer served as the buyer's broker) constituted the unquestioned hallmark of that action (in contrast to this action, in which the 47 acres is but one of numerous transactions, and affects only Kovall); and (3) because only a single party or witness (i.e. Heslop) resided in San Luis Obispo. As a result, any comparison between the motion to transfer in that action (which appears to have been the inspiration for Kovall to bring his tardy motion) and this one constitutes a comparison of apples and oranges.

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Court.

3. Kovall's motion cynically selects but one of several transactions involved in this action, i.e. the one that arguably supports his preordained choice of venue, and ignores all the other transactions, which occurred either in this County or elsewhere around the State.

In addition to ignoring the Moskow action, which as noted above constitutes the primary basis for Plaintiffs' claims against each of the remaining defendants, Kovall ignores each of the remaining transactions involved in Plaintiffs' claims against him, presumably because they do not fit his preconceived conclusion that the case should be tried in his home County of Riverside. As noted above, the 47 acres transaction on which the claims against Kovall is based constitutes but one of approximately seven different transactions at issue in this case. Moreover, as noted in the Bosserman declaration , those transactions involve the testimony of numerous individuals who either reside in Orange County or, if they reside elsewhere, are clearly amenable to process (see Cal. Code Civ. Proc. § 1989 (providing for statewide service of trial subpoenas)). Thus, for example, with respect to the Moskow action, the Bosserman declaration identifies a total of eight witnesses, four of which (including the Moskows themselves and their attorney) are located in Orange County, and none of which are based in Riverside.[4] Similarly, as to the Total Tire Recycling transaction, the Bosserman declaration identifies a total of eight witnesses, from a variety of places within the State (including one from Orange County), none of which are from Riverside County. Moreover, unlike the artificially padded list offered by Kovall of marginal witnesses to the 47 acres transaction (see section C.5 below), each of the witnesses identified in the Bosserman declaration played significant roles in the transactions that are the subject of this action, including the plaintiffs to the Moskow action and their attorneys; the co-defendant in that case; former employees of the Peebles and Rosette defendants that worked on the case; and the key attorneys and executives involved in the Total Tire

[4] The remaining witnesses are based in San Diego, Sacramento, and Tuolumne Counties.

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Recycling Transaction. By contrast, because Kovall does not even discuss any of the remaining transactions that are the subject of this action, and because the Court must consider the interests of all of the potential third party witnesses to this action, Kovall cannot meet his burden of establishing that the convenience of such witnesses and the ends of justice justify transfer of this action.

4. Kovall's motion ignores the fact that the interests of the witnesses as to these other transactions would uniformly be served by having the case tried in its chosen venue, rather than in Riverside.[5]

In addition to selectively treating the issues and claims involved in this action, Kovall greatly exaggerates the alleged "convenience" to third party witnesses, even as to the single claim on which he relies. For example, while trumpeting, with considerable fanfare, the fact that Coachella, the site of the 47 acres, is 119 miles from this Court (see Weatherup declaration, ¶ 14), Kovall's counsel conveniently ignores the fact that his motion seeks to transfer this action to the court in the City of Riverside (the site of the related action involving Kovall's wife Shambaugh and others), which is 77.04 miles from the property in Coachella. See Weatherup declaration, ¶ 16; Bosserman declaration, ¶ 3. As a result, even as to witnesses residing in or near the 47 acres property in Coachella, the requested transfer would result in minimal, if any, "convenience." Moreover, because Kovall does not discuss any transaction other than the 47 acres, or any of the witnesses to those transactions, it is, therefore, unsurprising that the interests of those witnesses would uniformly be served by retaining venue in this Court. Thus, in addition to the fact that Orange County is more convenient to witnesses from Orange County (five witnesses identified in the Bosserman declaration), Los Angeles County (two witnesses), and San Luis Obispo County (one witness), and is at least equally convenient to witnesses from San Diego County (two witnesses), the interests of the remaining seven witnesses from Northern California would be far better served by having an airport (John Wayne Airport in Orange County) that is 8.9

[5] Apparently, Kovall's codefendants, the Peebles' defendants, agree with Plaintiffs' assessment of the convenice of witnesses and ends of justice because they refused to agree to the transfer. In fact, of all of Kovall's co-defendants in this action, only Edwards agrees with the requested transfer.

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miles from this courthouse, as opposed to Ontario Airport, which is 18.37 miles from the courthouse in Riverside. See Bosserman declaration, ¶ 14. Thus, far from supporting Kovall's claims, the convenience of witnesses in fact justifies venue in this Court.

5. Even as to the one transaction identified in the Transfer Motion, Kovall improperly relies on witnesses that are logically immaterial to the disputed issues, have admitted they know little or nothing about the transaction, or are duplicative, and on the ludicrous suggestion that the jury will somehow need to examine the undeveloped desert property involved in that transaction.

Even as to the single transaction on which the Transfer Motion is purportedly based -- i.e., the purchase of the 47 acres -- Kovall's claims, like reports of Mark Twain's death, are greatly exaggerated. As indicated above, the sheer number of trial witnesses is not conclusive in determining venue, and the moving party must establish, through competent and specific averments, that the claimed witnesses are relevant, material, and not cumulative.

Here, Kovall does none of these. In addition to the conclusory nature of the declaration of Kovall's counsel Weatherup, which greatly resembles those found in Flanagan and Corfee, supra, many of the "witnesses" identified in that declaration (¶ 13) pertain to aspects of the Echo Trail transaction that are simply not at issue in this case. Contrary to Kovall's claims, there is no issue in this case with respect to either the title to or the condition of the property; instead, the issues in this case pertain to the value of the property, and whether Kovall inflated the value and otherwise misled the Tribe to obtain a share of the commissions for himself or his girlfriend. As a result, there **is no possible relevance** to the proposed testimony of the title officer (the sole third party witness as to whom Kovall submits a declaration showing that she would be inconvenienced by trial in this venue); the title company (four employees); the inspector, engineers, or environmental site assessor on the property (seven employees) the property insurer (four employees); the lender (two employees); the Riverside County recorder; or the three attorneys that allegedly advised the Tribe in connection with the purchase of the property (the latter of which would

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additionally be potentially subject to the attorney-client privilege).[6] Those individuals, when added to Kovall himself (¶ 13(b)) and the eight members or employees of the Tribe also identified in paragraphs 13(cc)-(jj) of the Weatherup declaration (and whose inclusion is similarly improper, because employees of parties cannot be considered on a motion to transfer, and because such individuals have agreed to travel to this County for trial), indicate that approximately thirty-three of the thirty-seven potential witnesses identified by Kovall are utterly irrelevant to this motion.

Finally, the suggestion that transfer is necessary because the jury would have to view the property so that it could appreciate its "unique location and character" (motion, p. 7:9; see also Weatherup declaration, ¶¶ 9-12) is ludicrous. As shown in the photographs and other documents attached to the accompanying Marinko declaration the Echo Trails property consists of 47 acres of undeveloped desert land. While welcoming the spectacle of defendants' counsel extolling to a jury the "unique qualities and unique value" of the sand, rocks, and shrubbery contained on the land, the fact remains that Kovall has brazenly distorted and exaggerated the facts regarding this case to create false appearances and impressions about the issues in this case and their relation to Riverside County, in a cynical attempt to delay this case and otherwise deprive the Tribe of their chosen venue. This Court should reject that attempt, by denying the present motion.

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[6] That fact is confirmed by the accompanying declarations of Joe Marinko and Tracey Allen, the Tribe's investigators, who spoke with many of the persons identified in the Weatherup declaration, several of whom told them that they knew nothing regarding the subject transaction and/or were no longer employees of the companies involved in it.

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CONCLUSION

For the reasons set forth above, this Court should deny Kovall's motion to transfer venue.

Dated: April 30, 2010

SPOLIN SILVERMAN COHEN & BOSSERMAN LLP

By: _____
GORDON E. BOSSERMAN
Attorneys for Plaintiffs TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA; TWENTY-NINE PALMS ENTERPRISES CORPORATION; and ECHO TRAIL HOLDINGS, INC., a limited liability company

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PROOF OF SERVICE

Twenty-Nine Palms v. Edwards, Case No. 30-2009 00311045

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 100 Wilshire Blvd., Ste 1400, Los Angeles, CA 90401.

On April 30, 2010, I caused to be personally served the foregoing document(s) described as **(1) MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO TRANSFER ACTION; (2) DECLARATION OF GORDON E. BOSSERMAN; (3) DECLARATION OF JOE MARINKO; and (4) DECLARATION OF TRACEY D. ALLEN**

by Janney & Janney Attorney Service, 1545 Wilshire Boulevard, Suite 311Los Angeles, CA 90017on the interested partie(s) as follows:

Bartley Louis Becker
Lewis Brisbois Bisgaard & Smith LLP
221 North Figueroa Street
Suite 1200
Los Angeles, CA 90012-2601

On April 30, 2010, the aforementioned document was also served via Federal Express on the interested parties in this action addressed as follows:

Alan H. Schonfeld
Schonfeld, Bertsche, Preciado & Mahady, LLP
402 West Broadway, Suite 1890
San Diego, CA 92101

Brian D. Peters
Waxler Carner Bodsky LLP
1960 East Grand Avenue
Suite 1210
El Segundo, CA 90245

John W. Sheller
Wendy Wen Yun Chang
Hinshaw & Culbertson LLP
11601 Wilshire Blvd.
Suite 800
Los Angeles, CA 90025

Overnight service was made by placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above. I am readily familiar with the firm's practice of collection and processing items for delivery with FEDERAL EXPRESS. Under that practice such envelope(s) is deposited at a box or other facility regularly maintained by FEDERAL EXPRESS or delivered to an authorized courier or driver authorized by FEDERAL

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EXPRESS to receive such envelope(s), in an envelope or package designated by FEDERAL EXPRESS with delivery fees paid or provided for, on the same day this declaration was executed, at 100 Wilshire Boulevard, Santa Monica, California, in the ordinary course of business.

Executed on April 30, 2010 at Los Angeles, California.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Kristin Tuckosh

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EXHIBIT C

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TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA; TWENTY-NINE PALMS ENTERPRISES CORPORATION; and, ECHO TRAIL HOLDINGS, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA; TWENTY-NINE PALMS ENTERPRISES CORPORATION; and ECHO TRAIL HOLDINGS, LLC, a limited liability company,

Plaintiffs,

vs.

NADA L. EDWARDS, an individual, GARY E. KOVALL, an individual, ROBERT A. ROSETTE, an individual, ROSETTE & ASSOCIATES PC, a professional corporation, MONTEAU & PEEBLES LLP, a partnership, FREDERICKS & PEEBLES, LLP, a partnership, FREDERICKS PEEBLES & MORGAN LLP, a partnership, and Does 1 through 100,

Defendants.

Case No.: 30-2009 00311045

Case Assigned to the Honorable David C. Velasquez, Dept. CX101

PLAINTFF TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA RESPONSE TO DEFENDANT MONTEAU & PEEBLES; FREDERICKS & PEEBLES; AND FREDERICKS PEEBLES & MORGAN SPECIAL INTERROGATORIES

Complaint filed October 13, 2009

PROPOUNDING PARTY:	DEFENDANTS MONTEAU & PEEBLES, LLP, FREDERICKS & PEEBLES, LLP, and, FREDERICKS PEEBLES & MORGAN LLP
RESPONDING PARTY:	PLAINTIFF TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA
SET NO.:	ONE

In accordance with the provisions of *Code of Civil Procedure* section 2030 et seq., and the agreement of counsel regarding timing of these responses, Plaintiff TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA ("Plaintiff" or the "Tribe") hereby responds the Special Interrogatories of Defendant MONTEAU & PEEBLES; FREDERICKS & PEEBLES; AND, FREDERICKS PEEBLES & MORGAN ("Defendant" or "Peebles"), Set No. One, as follows:

GENERAL OBJECTIONS

Plaintiff objects to each and every interrogatory as set forth herein. These objections are incorporated into every response and are set forth herein to avoid the duplication and repetition of restating them for each response. The failure to specifically incorporate a general objection should not be construed as a knowing waiver of a potentially applicable objection, because Plaintiff may not understand or interpret an interrogatory in the same manner as Defendant.

1. Plaintiff objects to each interrogatory to the extent that it requests information or documents that are protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine, and such information or documents will be withheld.

2. Plaintiff objects to each interrogatory to the extent that it calls for documents containing proprietary and/or confidential information and/or trade secrets.

3. Plaintiff objects to each interrogatory to the extent that it requests information

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that would violate any constitutional, statutory or common law privacy interests of Plaintiff or any other person or entity.

4. Plaintiff objects to each interrogatory to the extent that it is so broad that Plaintiff cannot identify with clarity the information requested.

5. Plaintiff objects to each interrogatory to the extent that it is so vague, ambiguous, overly broad, unduly burdensome and oppressive as to render it impossible to respond in any reasonable manner or amount of time.

8. Nothing herein should be construed as an admission by Plaintiff respecting the admissibility or relevance of any fact or document or of the truth or accuracy of any characterization or statement of any kind contained in Defendant's interrogatories.

9. Plaintiff has not fully completed its investigation of the facts relating to this case, its discovery or its preparation for trial. All responses herein are based only upon such information and documents that are presently available to and specifically known to Plaintiff. It is anticipated that further discovery, independent investigation and legal research and analysis will supply additional facts and add meaning to known facts, as well as establish entirely new factual conclusions and legal contentions which may lead to substantial additions, changes to and variations from the responses herein. The objections and responses herein are given without prejudice to Plaintiff's right to produce evidence of any subsequently discovered information or documents. Plaintiff accordingly reserves the right to introduce evidence and make contentions at trial in addition to or at variance with the responses herein. The responses contained herein are made in a good faith effort to supply information that is currently available, but should in no way be to the prejudice of Plaintiff in relation to further discovery, investigation or trial.

RESPONSES TO SPECIAL INTERROGATORIES

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SPECIAL INTERROGATORY NUMBER ONE:

State with specificity each and every act, or failure to act, by Defendant PEEBLES that YOU contend constituted professional negligence. (As used herein, the terms "YOU" and "YOURS" shall mean responding party and shall include anyone acting on YOUR behalf). (As used herein, the term "PEEBLES" shall mean MONTEAU & PEEBLES, LLP, FREDERICKS & PEEBLES, LLP, and FREDERICKS PEEBLES & MORGAN LLP, and shall include its employees and/or agents acting on their behalf).

RESPONSE TO SPECIAL INTERROGATORY NUMBER ONE:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Peebles knew that Gary Kovall ("Kovall") was employed as an attorney for the Tribe and had the authority from the Tribe to hire outside law firms, such as Peebles. Peebles knew that once employed, its invoices would be reviewed and approved for payment by Kovall. With this knowledge, in or about October of 2003, Peebles formed some kind of relationship with Kovall, whereby it agreed, among other things, to pay Kovall a percentage of the fees generated from legal work he referred to Peebles and to pay, in addition, a monthly stipend for his referral of legal work to Peebles. Less than a month after the Peebles/Kovall agreement was made, Kovall retained Peebles on behalf of Plaintiff to represent Plaintiff in various matters. The foregoing described agreement between Kovall and Peebles was never disclosed verbally or in writing to the Tribe nor was its approval of same ever obtained by Peebles. Peebles then billed the Tribe for such work. Peebles' bills were reviewed and approved by Kovall and the Tribe paid Peebles in response to its bills based on the approval and recommendation of Kovall. Peebles then paid Kovall a portion of the fees collected from the Tribe for such work. At the same time, Kovall was submitting his own bills to the Tribe for work on these matters and was receiving payment from the Tribe for such work.

In connection with the Moskow action, Peebles, along with co-counsel Nada

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Edwards, failed to advise the Tribe that there might be a conflict of interest between the Tribe and Dean Mike and failed to obtain the written authorization from the Tribe to undertake the representation of Dean Mike under those circumstances. After being retained by the Tribe, Peebles assisted in formulating strategy for the defense of the action and in implementing that strategy, including assisting in filing papers with the Court in the Moskow action which unsuccessfully challenged jurisdiction based on Sovereign Immunity; then, after that defense was lost due to the existence of an arbitration provision in the real estate purchase and sale documents, Peebles and the other attorneys utilized by the Tribe in the defense of the Moskow action, agreed to waive any right to arbitration held by the Tribe, thereby exposing the Tribe and Dean Mike to trial by a jury which substantially increased the exposure of the Tribe and Dean Mike in the action. Peebles also assisted Edwards with the tender of the defense of the Moskow action to Navigators California Insurance Services, Inc. and North American Capacity Insurance Company, the carriers who were providing a defense of the Moskow action to Al Oligino and Oligino Construction Services, another defendant in the action and did not tender defense to the Tribe's carrier, Hudson Insurance Company. After being retained to represent the Tribe, Peebles failed to conduct any significant discovery in the action to defend the Tribe or Dean Mike. After being retained to represent the Tribe, Peebles participated in the preparation of a Summary Judgment Motion which was never filed while Peebles was one of the Tribe's attorneys. Peebles knew or should have known of the existence of a romantic relationship between Kovall and Peggy Shambaugh. However, Peebles and Edwards used the services of Peggy Shambaugh for certain real estate related matters and failed to disclose to the Tribe the fact that Shambaugh was romantically involved with Kovall and failed to obtain the written waiver of any conflict of interest that might exist by virtue of using the services of Shambaugh under these circumstances. Peebles and Edwards also used the services of Paul Bardos as an expert or consultant under circumstances where Peebles knew or should have known that Bardos,

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and/or his companies, was also providing services to the Tribe in connection with other matters involving the Tribe, thereby exposing his judgment to challenge for lack of objectivity and under circumstances where Peebles knew or should have known that Bardos was beholding to Kovall in connection with Kovall's recommendation of Bardos to the Tribe and where Bardos was providing Kovall with substantial benefits related to Kovall's recommendation of him to the Tribe. Peebles also knew or should have known that Kovall had some relationship with certain other firms defending the Tribe in the Moskow action in connection with which Kovall was receiving benefits from such firms for referring to them the Tribe's defense work related to the Moskow action. In that connection, Peebles failed to reveal to the Tribe the existence of such relationships or to discuss with the Tribe the possible ramifications of such arrangements on the work provided by those other firms in the defense of the Tribe in the Moskow action. Peebles also used attorneys to work on the Moskow action who were not licensed to practice law in California; yet, Peebles billed the Tribe for the services of these attorneys at rates comparable to attorneys licensed to practice law in California. Peebles also used inexperienced attorneys to work on the Tribe's matters and failed to properly supervise them; yet, Peebles billed the Tribe for the services of these attorneys as though they were experienced attorneys. In addition, Peebles billed the Tribe for work which these attorneys did to learn the law applicable to the matters they worked on for the Tribe.

In 2005, 2006 and 2007, Kovall recommended to the Tribe that it enter into agreements in each of those years with its general liability insurance carrier "commuting" the coverage it had with the general liability carrier for claims arising in those years, whereby, in effect, the Tribe would be paid by the general liability carrier to cancel its general liability insurance coverage with the carrier. Kovall represented the Tribe in connection with its agreements to "commute" its general liability coverage in each of these years. At the time of those negotiations, the agreement referred to above between Kovall

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and Peebles was in full force and effect. Yet, neither Kovall nor Peebles disclosed to the Tribe the existence of the agreement or the benefit Kovall received from Peebles for referring business to it, nor was there any disclosure of the impact such an agreement and interest would have on the recommendations of Kovall to commute the subject insurance. Specifically, Kovall, who had some sort of arrangement with Peebles, had a financial interest in insuring that the Tribe's carrier commuted its coverage for the Tribe and in the continuation of work performed by Peebles for the Tribe. Based on Kovall's recommendation and failure to disclose the possible adverse consequences to the Tribe from such agreements, the Tribe entered into agreements with its general liability carrier commuting its coverage for those years. Kovall did not disclose to the Tribe that it had a basis for coverage for the defense of the Moskow action under its policy with its general liability carrier, nor did he disclose that by "commuting" its coverage with its general liability carrier, it could lose its right to seek coverage for the claims made by the Moskows in the Moskow action or that it would have to pay more in costs of defending that action. At the time Kovall made these commutation agreements with the Tribe's general liability carrier, the agreement between Kovall and Peebles described above was in full force and effect. In doing these things, Kovall was acting in part as the agent of Peebles. Peebles was at the time, one of the Tribe's attorneys in connection with the defense of the Moskow action. Peebles knew, or should have known, that Kovall was commuting the coverage the Tribe had with its general liability carrier and knew, or should have known, that such agreement would adversely affect the rights of the Tribe to coverage for the defense of the Moskow action. Yet, Peebles did not advise the Tribe that the commutation of its policy of insurance could adversely affect the Tribe in any way in connection with the defense of the Moskow action. Part of the reason for Peebles' failure to do so was its desire to continue to receive fees from the work it provided the Tribe in the defense of the Moskow action.

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It appears that Peebles also provided services to the Tribe in connection with one or more construction projects that were supposed to be done by Bardos and/or one or more of his companies. The contracts with Bardos and/or his companies were negotiated and prepared by Kovall while he was associated with Peebles and were reviewed by Peebles and the Tribe was permitted to enter into them despite the fact that the contracts were deficient in that they allowed Bardos and/or his companies to charge the Tribe exorbitant and inappropriate fees for defective work. Peebles did not advise the Tribe of the risks of entering into contracts with Bardos containing these builder-friendly terms.

During the existence of the relationship between Peebles and Kovall, Kovall also provided services to the Tribe in connection with the Total Tire venture, a venture in which Kovall took an ownership interest, without fully disclosing the existence of which to the Tribe and without obtaining its informed written consent. As a result of the recommendation of Kovall and David Alan Heslop, the Tribe invested over $5 million in a "recycling" venture in the Sacramento, California area. This was known as the "Total Tire" venture. The Tribe did not understand or appreciate that Heslop and Kovall arranged for the ownership of the Total Tire venture to be set up so that they each acquired an ownership interest in the Total Tire venture without investing any money of their own in the deal. Thus, the Tribe took all of the financial risk, which resulted in a total financial loss to the Tribe of over $5 million. Kovall and Heslop convinced the Tribe to invest more money in this venture when it was clear, or should have been clear, to them that further investment by the Tribe would be lost. Kovall made these recommendations to the Tribe while he was associated in some way with Peebles. As a result, the Tribe lost additional sums in the Total Tire venture of in excess of $1.5 million. Kovall's work on the Total Tire venture continued into and after 2003 and the formation of the relationship between Peebles and Kovall.

Peebles also represented the Tribe in connection with its possible entry into the solar energy business in connection with an entity called Emerald Solar. In connection with that

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work, Peebles prepared much of the agreements and related documents for the Emerald Solar deal. Kovall, while still associated with Peebles, brought to the Tribe solar business ventures, including the Emerald Solar venture. Peebles knew or should have known that Kovall had an ownership interest in the Emerald Solar entity with whom the Tribe proposed to deal as well as an ownership interest in one of the entities that owned the Emerald Solar entity. The Tribe did not know of Kovall's ownership interests and neither he nor Peebles disclosed the existence of that ownership interest to the Tribe.

Beginning in about 2005 and continuing into 2007, while Kovall was associated with Peebles, Kovall represented the Tribe with respect to the acquisition of approximately 47 acres of real property known as the "Echo Trail" property (hereafter the "Echo Trail property"), from its then owner Dillon Road Associates, LLC. While Kovall was associated with Peebles, he persuaded the Tribe to utilize the services of Windermere real estate brokerage as the buyer's broker in the transaction, with Peggy Shambaugh as the responsible individual sales person. Windermere and Shambaugh were brought into this transaction less than two months before it closed, at a point when negotiations between the Tribe and the then-owner of the land were at an end or near an end. Further, the services provided by Windermere and Shambaugh in connection with the Tribe's acquisition of the 47 acres were of little or no value to the Tribe.

Unbeknownst to the Tribe, at the time Kovall represented the Tribe in connection with the acquisition of the Echo Trail property and while he was still associated with Peebles, Kovall was in a romantic relationship with Shambaugh, in which the two, at the time of the purchase of the property, lived together and held themselves out as being husband and wife. In July 2008, following his divorce from his then-wife in 2007, Kovall and Shambaugh were formally married. At no time did Kovall ever disclose to the Tribe his relationship to Shambaugh. Instead, Kovall actively concealed his relationship with Shambaugh, as a means of personally benefiting from the purchase of the Echo Trail

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property. Such concealment and relationship created a clear conflict of interest for Kovall, who as noted above, represented the Tribe and Echo Trail Holdings, an entity formed by the Tribe to take title to parcels of real property, including the Echo Trail property.

In addition to the services provided by Kovall to the Tribe during his relationship with Peebles, Peebles provided specific services to the Tribe in connection with its acquisition of the 47 acres, including services with respect to obtaining financing for the acquisition. In this role, Peebles reviewed the acquisition documents and financing documents executed by the Tribe in order to acquire the 47 acres. Throughout this time, Peebles knew or should have known of the relationship between Kovall and Shambaugh based on Peebles contacts with Kovall and Shambaugh and knew or should have known of the Tribe's use of Shambaugh and Windermere as its broker in connection with the acquisition of the 47 acres and the conflict of interest it presented; yet, Peebles never disclosed the relationship to the Tribe, nor did it advise the Tribe of the risks associated with using Windermere and Shambaugh as a real estate broker in a transaction by which it acquired real property. In addition, Peebles knew or should have known that the 47 acres was not worth the price being paid for it by the Tribe and yet Peebles never advised against the acquisition or disclosed the discrepancy between the sales price and the market value of the 47 acres.

Following the acquisition of the 47 acres by the Tribe and Echo Trail Holdings, Peebles provided services in connection with a possible transfer of the 47 acres into trust. In connection with that work, Peebles knew or should have known that the Tribe had over paid for the purchase of the 47 acres and should have disclosed this information to the Tribe.

Peebles also represented the Tribe in the other matters described above and may have provided services in those matters which did not meet the standard of care. Discovery on that question is proceeding.

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SPECIAL INTERROGATORY NUMBER TWO:

State with specificity each and every act, or failure to act, by Defendant PEEBLES that YOU contend constitutes a breach of contract.

RESPONSE TO SPECIAL INTERROGATORY NUMBER TWO:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Peebles expressly and impliedly agreed to provide competent legal services to Plaintiff, to charge a reasonable and appropriate rate for such legal work, to be honest in Peebles' dealings with Plaintiff, not to assume a position of a conflict of interest with Plaintiff and to disclose all information that would be material to Plaintiff's consideration of transactions and matters as to which Plaintiff sought advice from Peebles, including those associated with Peebles, such as, Kovall. Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory No. 1, above, as though fully set forth at length. In doing or failing to do the things described above, Peebles breached its contract with Plaintiff.

SPECIAL INTERROGATORY NUMBER THREE:

State with specificity each and every act, or failure to act, by Defendant PEEBLES that YOU contend constitutes a breach of the covenant of good faith and fair dealing.

RESPONSE TO SPECIAL INTERROGATORY NUMBER THREE:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: In every contract made or to be performed in California, there is an implied covenant of good faith and fair dealing. Peebles agreed to provide competent legal services to Plaintiff, to charge a reasonable and appropriate rate for such legal services, to be honest in Peebles dealings with Plaintiff, not to assume a position of a conflict of interest with Plaintiff and to disclose all information that would be material to Plaintiff's consideration of transactions and matters as to which Plaintiff sought advice

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from Peebles, including those associated with Peebles, such as Kovall. Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory No. 1, above, as though fully set forth at length. In doing or failing to do the things described above, Peebles breached the covenant of good faith and fair dealing.

SPECIAL INTERROGATORY NUMBER FOUR:

State with specificity each and every act, or failure to act, by Defendant PEEBLES that YOU contend constitutes a breach of fiduciary duty.

RESPONSE TO SPECIAL INTERROGATORY NUMBER FOUR:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Peebles expressly and impliedly agreed to provide competent legal services to Plaintiff, to be honest in Peebles dealings with Plaintiff, not to assume a position of a conflict of interest with Plaintiff and to disclose all information that would be material to Plaintiff's consideration of transactions and matters as to which Plaintiff sought advice from Peebles, including those associated with Peebles, such as Kovall.. Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory No. 1, above, as though fully set forth at length. In doing or failing to do the things described above, Peebles breached its fiduciary duty to Plaintiff.

SPECIAL INTERROGATORY NUMBER FIVE:

State with specificity each and every act, or failure to act, by Defendant PEEBLES that YOU contend constitutes an unjust enrichment.

RESPONSE TO SPECIAL INTERROGATORY NUMBER FIVE:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory No. 1, above, as though fully set forth at length.

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For the reasons explained above, Plaintiff overpaid for the deficient services provided by Peebles and for the costs Peebles billed to Plaintiff in connection with those services in that, among other things, Peebles would not have obtained the assignments from Plaintiff but for its undisclosed and wrongful financial arrangement with Kovall. This arrangement also allowed, indeed, incentivized Kovall's approval of bills from Peebles for work done by attorneys unlicensed in California and for -inexperienced associates who learned the law applicable to the particular matters at the expense of Plaintiff.

SPECIAL INTERROGATORY NUMBER SIX:

Please identify with specificity each and every item of damage YOU allege YOU suffered as a result of any alleged act or omission to act by PEEBLES by category, amount, date, and entity to which such damage was incurred.

RESPONSE TO SPECIAL INTERROGATORY NUMBER SIX:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory Nos. 1 and 5, above, as though fully set forth at length. In addition, Plaintiff responds as follows:

a. The payment of Peebles for services that were worthless or not worth what was charged. Plaintiff paid Peebles in excess of $490,000.00, some part of which was worthless or worth less than charged.

b. The payment of Peebles for services where Peebles was providing a benefit of some kind to Gary E. Kovall. The Plaintiff paid Peebles in excess of $490,000.00 in fees, some portion of which is subject to return to the Tribe based on the provision of a benefit to Kovall without disclosure or permission from the Tribe.

c. Peebles employed the services of Shambaugh, a person with whom Kovall had a

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romantic relationship, as an expert and/or consultant, and billed the Tribe for such services, the exact amount of which is presently unknown. However, that amount should be returned to the Tribe.

d. Peebles employed the services of Paul Bardos as an expert and/or consultant, under circumstances, described elsewhere in these responses, which renders those services of little value. Plaintiff paid for those services which were billed to it by Edwards. Some portion, or all, of the amounts billed for Bardos' services as expert or consultant should be returned to Plaintiff. Plaintiff does not yet know the precise amount which should be returned.

e. Peebles also supplied services to Plaintiff, either directly or through Kovall, related to contracts negotiated by Kovall with Bardos or his companies, which contracts were defective and one-sided in favor of Bardos and/or his companies; and Plaintiff as paid Bardos and/or his companies exorbitant and unnecessary fees in connection with those contracts and in the defense of actions or proceedings brought by Bardos and/or his companies to collect those fees.

f. Plaintiff paid attorneys fees and costs in connection with the defense of the Moskow action in the amount of approximately $1,520,331.88. The Plaintiff also paid $550,000.00 to settle the case. Of those amounts, approximately $1,264,275.67 will not be reimbursed by the Plaintiff's insurance carrier. Hudson Insurance, the Tribe's liability insurance carrier, paid $275,000.00 towards the settlement amount, $131,056.21 for Sheppard Mullin Richter & Hampton's legal fees and $400,000.00 to settle the Plaintiffs' claims arising out of the Moskow litigation. In addition, the sum of $100,000.00 was paid for commuting Hudson Insurance 's policies nos. NAA00011-05 and NAA00011-06. In addition, the Plaintiff paid approximately $2,345,000.49 for consulting and legal services to Kovall , some of which were for services provided in the Moskow litigation.

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g. Plaintiff also paid Paul Bardos, Exponent Failure Analysis, HRA Environmental Consultants, Inc. and Miller Mediation Services approx. $31,991.34 in fees, some portion of which it should not had to pay had the Moskow action been handled properly.

h. Plaintiff also paid Windermere/Shambaugh approximately $1,000,000 in commission in connection with the purchase of the 47 acres.

i. Plaintiff also paid approximately $10,000,000 more for the 47 acres than it was worth.

j. Plaintiff also paid tens of thousands of dollars in fees related to work done of solar ventures, including the Emerald Solar matter, some portion of which should be returned to Plaintiff.

k. Peebles also failed to seek a re-assessment of the tax assessment on the 47 acres based on its actual value that cost Plaintiff over a hundred thousand dollars.

SPECIAL INTERROGATORY NUMBER SEVEN:

For each and every item of damage identified by YOU in YOUR response to Special Interrogatory Number 6 above, please identify each and every DOCUMENT that supports each such item of damage with specificity, by date, author, recipient, and format. (As used herein, the term "DOCUMENT" shall mean any writing as defined under California Evidence Code Section 250, including, but not limited to, any written, printed, typed, photostatic, photographed, recorded, electronically stored, computerized and/or otherwise reproduced communication or representation, whether comprised of letters, words, numbers, pictures, sounds or symbols, electronic and/or computerized data or any combination thereof. This definition includes all drafts of every document and/or computer file, and copies or duplicates of documents and/or computer files contemporaneously or subsequently created, and computer back-up files, which have any non-conforming notes or other

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markings. Without limiting the generality of the foregoing, "document" includes, but is not limited to, correspondence, memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, working papers, accounts, analytical records, reports and/or summaries of investigations, trade letters press releases, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes or minutes of meetings or of other communications of any type, including inter-and intra-office communications, questionnaires, surveys, charts, graphs, photograph, phonograph recordings, films, tapes, disks, data cells, e-mail, printouts or hard copies of information stored or maintained by electronic data processing or word processing equipment, all other data compilations from which information can be obtained (by translation, if necessary, by you through detection devices into usable form) including, without limitation, electromagnetically or optically sensitive storage media such as tapes, floppy disks, hard disks, optical disks and/or CD-ROM, and any preliminary versions, drafts or revisions of any of the foregoing.

RESPONSE TO SPECIAL INTERROGATORY NUMBER SEVEN:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory Nos. 1 and 5, above, as though fully set forth at length. In addition, Plaintiff further objects to the subject Interrogatory on the grounds it seeks to invade the attorney work product principle and/or the attorney/client privilege by requesting Plaintiff to determine which documents support its damage claims and calculations. The subject Interrogatory is also overbroad in its purported requirement to state the "date, author, recipient, and format date" of each document and for the same reason it is burdensome and harassing. Subject to the foregoing, Plaintiff responds, as follows: all of the correspondence in the Moskow case up to the time Peebles was substituted out of the

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action, all of the pleadings in the Moskow case up to the time Peebles was substituted out of the action, including, without limitation, the Motion to Quash the Summons, the ruling on it, the documents filed in support and in opposition to the Petition for a Writ and the documents related to the Motion for Summary Judgment that Peebles worked on but did not file, all e-mails to or from Peebles related to the Moskow case, all of Peebles' billings to Plaintiff, all correspondence of any kind between Plaintiff and Peebles and/or Kovall after October of 2003 until Peebles ceased to work for Plaintiff, all notes of any attorney or clerk relative to work performed by Peebles for Plaintiff, all memoranda prepared by Peebles which relate to Plaintiff or work performed by Peebles for Plaintiff, the agreements between Peebles and Kovall with respect to his relationship with Peebles, the financial records of Peebles with respect to all amounts it paid Kovall, the invoices submitted to Peebles from vendors for costs which Peebles, in turn, billed Plaintiff, the expense reimbursement requests from Peebles attorneys reflecting any expense associated with Plaintiff, the records of Plaintiff with respect to the amounts it has paid the Sheppard Mullin law firm for work on the Moskow litigation, Plaintiff's records of what it has paid Bardos and/or his companies on the contracts referred above, Plaintiff's records with respect to what it has paid the Sheppard Mullin law firm to represent it with respect to actions or proceedings initiated by Bardos and/or his companies to collect fees, records related to settlement of the Moskow litigation, Plaintiff's records regarding real estate taxes in connection with the 47 acres, all documents relating to the purchase of the 47 acres, all documents relating to the financing of the purchase of the 47 acres, all of Kovall's bills or invoices to Plaintiff during the effective time of his relationship with Peebles, all documents which related to the commissions paid by Plaintiff to Shambaugh and/or Windermere during Kovall's relationship with Peebles, all documents relating to the Total Tire venture generated during the period of the relationship between Kovall and Peebles.

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SPECIAL INTERROGATORY NUMBER EIGHT:

If YOU contend PEEBLES gave YOU advice regarding an agreement with YOUR general liability insurance carrier to commute coverage, as described in Paragraph 45 of YOUR complaint herein, please state with specificity each and every fact which supports YOUR contention.

RESPONSE TO SPECIAL INTERROGATORY NUMBER EIGHT:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory Nos. 1, above. It is Plaintiff's contention that Peebles is responsible for the advice and recommendations about commutation made by Kovall for the reasons stated above.

SPECIAL INTERROGATORY NUMBER NINE:

For each and every fact identified by YOU in YOUR response to Special Interrogatory Number 8 above, identify with specificity each and every DOCUMENT that supports YOUR contention, by date, author, recipient, and format.

RESPONSE TO SPECIAL INTERROGATORY NUMBER NINE:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory Nos. 7 and 8, above, as though fully set forth at length. In addition, Plaintiff further objects to the subject Interrogatory on the grounds it seeks to invade the attorney work product principle and/or the attorney/client privilege by requesting Plaintiff to determine which documents support its damage claims and calculations. The subject Interrogatory is also overbroad in its purported requirement to state the "date, author, recipient, and format date" of each document and for the same reason it is burdensome and harassing. Subject to the foregoing, Plaintiff responds, as follows: the

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documents referred to in Response to No. 7, above, that relate to the relationship between Kovall and Peebles, Policy Nos. NAA00011-02, NAA00011-03, NAA00011-04; Policy Commutation and Settlement Agreement regarding policies Nos. NAA00011-02, NAA00011-03, NAA00011-04; April 14, 2009 letter from Rebecca Roberts to Lezlie Day regarding policy numbers: NAA00011-02-08; April 14, 2009 letter from Rebecca Roberts to Lezlie Day regarding policy numbers: NAA00011-03 and NAA00011-07; April 20, 2009 email from Robert Schiff to Rebecca Roberts; April 30, 2009 letter from Rebecca Roberts to Robert Schiff.

SPECIAL INTERROGATORY NUMBER TEN:

For each and every fact identified by YOU in YOUR response to Special Interrogatory Number 8 above, identify each and every witness whom YOU contend has knowledge of the facts upon which YOU base YOUR contention by name, address and last telephone number.

RESPONSE TO SPECIAL INTERROGATORY NUMBER TEN:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows:

1. Gary Kovall, can be contacted through his attorney;
2. Nada Edwards, Law Offices of Nada L. Edwards, 2122 North Broadway, Santa Ana, 714-558-8001;
3. Charles J. Antonen, formerly with Monteau & Peebles, address and telephone number unknown;
4. John Peebles, Frederick Peebles & Morgan LLP, 1001 2nd St. Sacramento, CA 95814, 916-441-2700;
5. Michael A. Robinson, Frederick Peebles & Morgan LLP, 1001 2nd St. Sacramento, CA 95814, 916-441-2700;

6. John Nyhan, Frederick Peebles & Morgan LLP, 1001 2nd St. Sacramento, CA 95814, 916-441-2700;

7. Darcie Houck, Frederick Peebles & Morgan LLP, 1001 2nd St. Sacramento, CA 95814, 916-441-2700;

8. Patricia Lenzi, formerly with Monteu & Peebles, Tribal Prosecutor, Washaoe Tribe of NV and CA, 919 US Hwy 395 N, Gardenerville, NV 89410, 775-265-7024;

9. Fred Assam, Frederick Peebles & Morgan LLP, 3817 Slaten Park Drive, Sioux Falls, 605-338-9147;

10. Thomas Fredericks, Frederick Peebles & Morgan LLP, 1900 Plaza Drive, Louisville, 303-6739600;

11. Hedi Bogda, address and telephone number unknown;

12. Timothy Kincaid, address and telephone number unknown;

13. Danielle Smith, Fredericks Peebles & Morgan LLP, 3610 North 163rd Plaza, Omaha, 402-333-4053;

14. Richard M. Freeman, Sheppard Mullin Richter & Hampton, LLP, 12275 El Camino Real, Suite 200, San Diego, Ca 92130, 858-720-8909;

15. Jon Maki, Sheppard Mullin Richter & Hampton, LLP, 12275 El Camino Real, Suite 200, San Diego, Ca 92130, 858-720-8909;

16. Rebecca Roberts, Sheppard Mullin Richter & Hampton, LLP, 12275 El Camino Real, Suite 200, San Diego, Ca 92130, 858-720-8909;

17. John A. Yacovelle, Sheppard Mullin Richter & Hampton, LLP, 12275 El Camino Real, Suite 200, San Diego, Ca 92130, 858-720-8909;

18. Kristina R. Haymes, Sheppard Mullin Richter & Hampton, LLP, 12275 El Camino Real, Suite 200, San Diego, Ca 92130, 858-720-8909;

19. Bram Hanono, Sheppard Mullin Richter & Hampton, LLP, 12275 El Camino Real, Suite 200, San Diego, Ca 92130, 858-720-8909;

20. James E. Bond, Sheppard Mullin Richter & Hampton, LLP, 12275 El Camino Real,

SPOLIN SILVERMAN COHEN & BOSSERMAN LLP
100 Wilshire Boulevard, Suite 1400
Santa Monica, CA 90401

Suite 200, San Diego, Ca 92130, 858-720-8909;

21. Richard Williamson, can be contacted through Plaintiff's attorney;

22. Dean Mike, can be contacted through Plaintiff's attorney;

23. Darrell Mike, can be contacted through Plaintiff's attorney.

SPECIAL INTERROGATORY NUMBER ELEVEN:

Please state each and every fact upon which YOU base YOUR contention that YOU had a basis for coverage in the Moskow action, as alleged in paragraph 45 of YOUR complaint.

RESPONSE TO SPECIAL INTERROGATORY NUMBER ELEVEN:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: The Tribe had at least seven different general liability policies with Hudson Insurance from April 1, 2002 through August 1, 2008 under which it had a basis for coverage for the Moskow litigation. In addition, the above mentioned polices provided coverage when specific claims are made against the Tribal officials such as in the Moskow litigation against Dean Mike. In fact, Hudson insurance did not dispute coverage under the policies that were not commuted. The Moskows claimed to have suffered personal injury and property damage and that such personal injury and property damage continued to occur.

SPECIAL INTERROGATORY NUMBER TWELVE:

Please state each and every fact upon which YOU base YOUR contention that by commuting YOUR general liability insurance coverage, YOU could lose YOUR "right to seek coverage for claims made by the Moskows in the Moskow action or that it would have to pay more in costs of defending that action," as alleged in paragraph 45 if YOUR complaint.

RESPONSE TO SPECIAL INTERROGATORY NUMBER TWELVE:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: There was a basis for insurance coverage for the cost of defense of the Moskow action and for indemnity in the event liability might be established in the action brought by the Moskows against Plaintiff. By commuting this coverage, this coverage obligation was extinguished.

SPECIAL INTERROGATORY NUMBER THIRTEEN:

Please describe with specificity each and ever "step" YOU contend PEEBLES took "to conceal the existence of this arrangement from the Tribe," as alleged in Paragraph 48 of YOUR complaint.

RESPONSE TO SPECIAL INTERROGATORY NUMBER THIRTEEN:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory No. 1, above, as though fully set forth at length. In addition, Peebles entered into an agreement with Kovall agreeing to provide him with a cut of the fees received by Peebles from the clients, such as Plaintiff, Kovall referred to Peebles. The Kovall/Peebles agreement was made in October, 2003. Less than a month later, Peebles sent Plaintiff a retainer letter. Peebles knew that Kovall had been at the time retained by Plaintiff to provide, in effect, services to Plaintiff as its general counsel. Peebles also knew that Kovall controlled the selection and payment of the attorneys retained by Plaintiff to represent it. As Plaintiff's attorney, Peebles had an ethical obligation as well as a fiduciary duty to reveal this relationship with Kovall to Plaintiff and to obtain Plaintiff's consent to this fee-splitting arrangement. Peebles never revealed the deal to Plaintiff despite these obligations to do so. As a fiduciary, this amounted to fraud and concealment.

//

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SPECIAL INTERROGATORY NUMBER FOURTEEN:

For each and every step YOU described in YOUR response to Special Interrogatory Number 13 above, please identify each and every DOCUMENT that supports YOUR response by date, author, recipient, and format.

RESPONSE TO SPECIAL INTERROGATORY NUMBER FOURTEEN:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory Nos. 1 and 13, above, as though fully set forth at length. In addition, all signed copies of agreements between Peebles and Kovall, all drafts of such agreements, all correspondence between Peebles and Kovall concerning such agreements, all notes by Peebles memorializing such agreements, all financial records of Peebles reflecting payment of funds to Kovall pursuant to such agreements, all correspondence between Peebles and Plaintiff, including the letter of November 5, 2003.

SPECIAL INTERROGATORY NUMBER FIFTEEN:

For each and every step YOU described in YOUR response to Special Interrogatory Number 13 above, identify each and every witness whom YOU contend has knowledge of the facts upon which YOU base YOUR response by name, address and last telephone number.

RESPONSE TO SPECIAL INTERROGATORY NUMBER FIFTEEN:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory Nos. 1 and 13, above, as though fully set forth at length. In addition, Harold Monteau, John Peebles, Thomas Fredericks, Robert Rosette, Kovall, persons employed in the accounting department of Peebles, Dean Mike, and Darrell Mike.

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586-2400

SPECIAL INTERROGATORY NUMBER SIXTEEN:

Please describe with specificity each and every fact upon which YOU base YOUR contention that PEEBLES acted with "malice, fraud or oppression" as set forth Paragraph 60 of YOUR complaint.

RESPONSE TO SPECIAL INTERROGATORY NUMBER SIXTEEN:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory No. 1, above, as though fully set forth at length. In addition, Peebles entered into an agreement with Kovall agreeing to provide him with a cut of the fees received by Peebles from the clients, such as Plaintiff, Kovall referred to Peebles. Less than a month later, Peebles sent Plaintiff a retainer letter. Peebles knew that Kovall had been at the time retained by Plaintiff to provide, in effect, services to Plaintiff as its general counsel. Peebles also knew that Kovall controlled the selection and payment of the attorneys retained by Plaintiff to represent it. As Plaintiff's attorney, Peebles had an ethical obligation as well as a fiduciary duty to reveal this relationship with Kovall to Plaintiff and to obtain Plaintiff's consent to this fee-splitting arrangement. Peebles never revealed the deal to Plaintiff despite these obligations to do so. As a fiduciary, this amounted to fraud and concealment. In addition, Peebles also had an ethical and fiduciary duty to reveal the existence of the relationship between Kovall and Shambaugh in connection with the work it did for Plaintiff in connection with the 47 acres. Peebles never revealed this fact to Plaintiff despite the fact that Peebles knew of this relationship and knew or should have known that it was material information that could impact Plaintiff's decision to buy the 47 acres and/or to continue to employ Kovall as its attorney. Peebles also knew or should have known of Kovall's ownership interest in Emerald Solar; yet, Peebles never revealed same to Plaintiff. Rather, Peebles billed Plaintiff for tens of thousands of dollars of fees related to this solar venture. Peebles also had an ethical and fiduciary duty to employ

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[illegible]-2400

attorneys who were fully competent to represent Plaintiff in connection with the matters for which Peebles agreed to represent Plaintiff. Peebles employed attorneys who were not competent to represent Plaintiff on various matter, including the defense of the Moskow action. Certain of the attorneys Peebles employed on this matter were not licensed in California and/or were inexperienced attorneys who, in effect, had to learn how to represent Plaintiff at Plaintiff's expense. As an attorney and fiduciary, Peebles had an obligation to disclose the foregoing information to Plaintiff. Peebles never disclosed the foregoing information to Plaintiff despite and in so doing, it concealed this information from Plaintiff.

SPECIAL INTERROGATORY NUMBER SEVENTEEN:

For each and every fact identified by YOU in YOUR response to Special Interrogatory Number 16 above, identify with specificity each and every DOCUMENT that supports YOUR contention by date, author, recipient, and format.

RESPONSE TO SPECIAL INTERROGATORY NUMBER SEVENTEEN:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory Nos. 1, 7 and 16, above, as though fully set forth at length.

SPECIAL INTERROGATORY NUMBER EIGHTEEN:

For each and every fact identified by YOU in YOUR response to Special Interrogatory Number 16 above, identify each and every witness whom YOU contend has knowledge of the facts upon which YOU base YOUR contention by name, address and last telephone number.

RESPONSE TO SPECIAL INTERROGATORY NUMBER EIGHTEEN:

Subject to the foregoing objections, each of which is incorporated here by this

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-2460

reference, Plaintiff responds, as follows: Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory Nos. 1, 7, 15 and 16, above, as though fully set forth at length.

1. Gary E. Kovall, 74534 Yucca Tree Drive, Palm Desert, telephone number unknown;
2. Peggy Shambaugh, Windermere, 74-850 Hwy 111, Indian Wells, 760-773-3958;
3. Paul Bardos, 1696 Redding Way, Upland, telephone number unknown;
4. David Alan Heslop, 5020 Shadow Canyon Road, Templeton, telephone number unknown;
5. Charles J. Antonen, formerly with Monteau & Peebles, address and telephone number unknown;
6. John Peebles, Frederick Peebles & Morgan LLP, 1001 2nd St. Sacramento, CA 95814, 916-441-2700;
7. Michael A. Robinson, Frederick Peebles & Morgan LLP, 1001 2nd St. Sacramento, CA 95814, 916-441-2700;
8. Michael A. Carr, address and telephone number unknown;
9. Christina V. Kazhe, 8359 Elk Grove Florin Rd, Sacramento, telephone number unknown;
10. Mark A. Levitan, 81 Palemone St., Sonora, telephone number unknown;
11. Deniz Haupt, 3922 25th St. San Francisco, telephone number unknown;
12. John Nyhan, Frederick Peebles & Morgan LLP, 1001 2nd St. Sacramento, CA 95814, 916-441-2700;
13. Darcie Houck, Frederick Peebles & Morgan LLP, 1001 2nd St. Sacramento, CA 95814, 916-441-2700;
14. Patricia Lenzi, formerly with Monteu & Peebles, Tribal Prosecutor, Washaoe Tribe of NV and CA, 919 US Hwy 395 N, Gardenerville, NV 89410, 775-265-

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-2400

7024;

15. Fred Assam, Frederick Peebles & Morgan LLP, 3817 Slaten Park Drive, Sioux Falls, 605-338-9147;

16. Thomas Fredericks, Frederick Peebles & Morgan LLP, 1900 Plaza Drive, Louisville, 303-6739600;

17. Hedi Bogda, address and telephone number unknown;

18. Timothy Kincaid, address and telephone number unknown;

19. Danielle Smith, Fredericks Peebles & Morgan LLP, 3610 North 163rd Plaza, Omaha, 402-333-4053;

20. Ross D. Colburn, address and telephone number unknown;

21. Jeremy Patterson, Louisville, Colorado, 303-673-9600;

22. Conly J. Schulte, Fredericks Peebles & Morgan LLP, 3610 North 163rd Plaza, Omaha, 402-333-4053;

23. Shilee T. Mullin, Fredericks Peebles & Morgan LLP, 3610 North 163rd Plaza, Omaha, 402-333-4053;

24. Leonika R. Charging, Fredericks Peebles & Morgan LLP, 3610 North 163rd Plaza, Omaha, 402-333-4053;

25. Tim Hennesy, address and telephone number unknown;

26. Jane M. Long, 1105 E Cherry St., Vermillion;

27. Steve Gralla, can be contacted through Plaintiff's attorney;

28. Robert Alderete, AISI dba Pan American Insurance, 86-695 Avenue 54, Suite G, Coachella, 760-399-0041.

29. Dean Mike, can be contacted through Plaintiff's attorney;

30. Darrell Mike, can be contacted through Plaintiff's attorney.

SPECIAL INTERROGATORY NUMBER NINETEEN:

Identify by name, address and last telephone number each and every witness whom

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YOU contend has knowledge of the facts upon which YOU base YOUR responses herein.

RESPONSE TO SPECIAL INTERROGATORY NUMBER NINETEEN:

Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory Nos. 10 and 18. In addition:

1. Tracey DeLange, Santarus, Inc, 3721 Valley Centre Dr. Ste 400, Sand Diego CA 92130, 858-314-5819;
2. Timothy A. DeLange, Bernstein Litowitz Berger & Grossman LLP, 12481 High Bluff, Dr. Ste 300, San Diego;
3. Robert Rosette, 565 W. Chandler Blvd., Suite 212, Chandler, AZ 85225, 480-889-8990;
4. Brendan Ludwick, 154 W 5th St Unit 137, Tempe, Arizona; 415-684-7273;
5. Steve Bodmer, 46576 Road 417 Bldg C, Coarsegold, CA93614;559-642-3681;
6. Christopher A. Love, address and telephone number unknown;
7. Dennis M. Alevizon, 2122 N Broadway, Santa Ana, CA 92706-2682, 714-558-8001;
8. Lonnie Moskow, address and telephone number unknown;
9. Eileen Moskow, address and telephone number unknown;
10. Mark C. Bailey, Bailey & Associates, A.P.C., 8865 Research Drive, Suite 200, 2nd Floor, Irvine, 949-852-9899;
11. Jennifer Feres, Bailey & Associates, A.P.C., 8865 Research Drive, Suite 200, 2nd Floor, Irvine, 949-852-9899;
12. Hon. Jonathan H. Cannon, Superior Court of California County of Orange, 700 Civic Center Drive West, Santa Ana, 657-622-7513;
13. Hon. Gail Andler, Superior Court of California County of Orange, 700 Civic Center Drive West, Santa Ana, 657-622-7513;

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San[illegible]a, CA 90401
[illegible]86-2400

14. William f. Rylaarsdam, Court of Appeal, 4th District, Division Three, 925 N. Spurgeon Street, Santa Ana, CA 92701, 714-571-2600;

15. Kathleen O. Leary, Court of Appeal, 4th District, Division Three, 925 N. Spurgeon Street, Santa Ana, CA 92701, 714-571-2600;

16. Raymond J. Ikola, Court of Appeal, 4th District, Division Three, 925 N. Spurgeon Street, Santa Ana, CA 92701, 714-571-2600;

17. Dean Mike, can be contacted through Plaintiff's attorney;

18. Darrell Mike, can be contacted through Plaintiff's attorney;

19. Paul Lewis, Desert Empire Insurance Services, 77564 Country Club, #401, Palm Desert, 760-360-4700;

20. James G. Parker Insurance Associates, 1753 East Fir., Fresno, 559-222-7722;

21. Glen A. Chapin, Tribal First, P.O. Box 609015, San Diego, 800-552-8921.

22. Richard M. Freeman, Sheppard Mullin Richter & Hampton, LLP, 12275 El Camino Real, Suite 200, San Diego, Ca 92130, 858-720-8909;

23. Jon Maki, Sheppard Mullin Richter & Hampton, LLP, 12275 El Camino Real, Suite 200, San Diego, Ca 92130, 858-720-8909;

24. Rebecca Roberts, Sheppard Mullin Richter & Hampton, LLP, 12275 El Camino Real, Suite 200, San Diego, Ca 92130, 858-720-8909;

25. John A. Yacovelle, Sheppard Mullin Richter & Hampton, LLP, 12275 El Camino Real, Suite 200, San Diego, Ca 92130, 858-720-8909;

26. Kristina R. Haymes, Sheppard Mullin Richter & Hampton, LLP, 12275 El Camino Real, Suite 200, San Diego, Ca 92130, 858-720-8909;

27. Bram Hanono, Sheppard Mullin Richter & Hampton, LLP, 12275 El Camino Real, Suite 200, San Diego, Ca 92130, 858-720-8909;

28. James E. Bond, Sheppard Mullin Richter & Hampton, LLP, 12275 El Camino Real, Suite 200, San Diego, Ca 92130, 858-720-8909;

29. James Taber, 3700 Cypress Avenue, El Monte, 323-283-0901;

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San [illegible], CA 90401
[illegible]6-2400

30. John Bennett, 3700 Cypress Avenue, El Monte, 323-283-0901;

31. Douglas Johnson, 1217 Glenwood Rd., Glendale, telephone number unknown;

32. Florence Adams, 1420 Sitka Ct., Claremont, 909-624-1142

33. Gene R. Gambale, 74090 El Paseo, Palm Desert, 760-773-0553

34. John E. Bond, 3158 Cabo Blanco Dr., Hacienda Heights, telephone number unknown;

35. Michael, Byrne, 3540 Los Alamos Way, Sacramento, telephone number unknown;

36. Michael R. Derry, 401 – B Talmage Road, Ukiah, telephone number unknown;

37. George Hennebury, 570 Marble Canyon Lane, San Ramon, telephone number unknown;

38. Bill Keller, 6740 Rancho Los Pavos Lane, Granite Bay, telephone number unknown;

39. Gary Matranga, 1834 Auburn Blvd., Sacramento, telephone number unknown;

SPECIAL INTERROGATORY NUMBER TWENTY:

Please identify with specificity, by date, author, recipient, and format, each and every DOCUMENT which YOU contend supports YOUR responses herein.

RESPONSE TO SPECIAL INTERROGATORY NUMBER TWENTY:

(a) Subject to the foregoing objections, each of which is incorporated here by this reference, Plaintiff responds, as follows: Plaintiff further objects to the subject Interrogatory on the grounds it seeks to invade the attorney work product principle and/or the attorney/client privilege by requesting Plaintiff to determine which documents support its damage claims and calculations. The subject Interrogatory is also overbroad in its purported requirement to state the "date, author, recipient, and format date" of each document and for the same reason it is burdensome and harassing. Plaintiff incorporates here by this reference Plaintiff's response to Special Interrogatory Nos. 7, 9 and 14. In addition: Monteau & Peebles November 5, 2003 engagement letter, Attorney services

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agreement between Twenty-Nine Palms Band of Mission Indians and R&A dated September 4, 2008, proposed retainer agreement by Edwards for the Computer Payroll Services action, proposed representation agreement between Kovall and the Plaintiff Twenty-Nine Palms Band of Mission Indians dated September 1, 2002, Kovall's of counsel agreement with M&P dated October 17, 2003, proposed retainer agreement by M & P dated November 5, 2003, February 1, 2007 consulting services agreement between the Plaintiff Twenty-Nine Palms Band of Mission Indians and Paul Bardos dba Bardos Construction Inc., September 28, 2007 consulting services agreement between the Plaintiff Twenty-Nine Palms Enterprises Corporation and Paul Bardos dba Bardos Construction Inc., May 22, 2007 contract between the Plaintiff Twenty-Nine Palms Band of Mission Indians and Cadmus Construction Company, April 1, 2008 contract between Plaintiff Twenty-Nine Palms Enterprises Corporation and Cadmus Construction Inc., March 10, 2008 contract between the Plaintiff Twenty-Nine Palms Enterprises Corporation and Cadmus Construction Inc. for bathroom remodel project, March 10, 2008 contract between the Plaintiff Twenty-Nine Palms Enterprises Corporation and Cadmus Construction Inc. for chiller and cogeneration plant building shell, March 12, 2007 contract between the Plaintiff Twenty-Nine Palms Enterprises Corporation and Cadmus Construction Company, May 7, 2007 contract between Plaintiff Twenty-Nine Palms Enterprises Corporation and Cadmus Construction Company, Buyer Broker Agreement between Echo Trail Holdings, LLC and Windermere Real Estate dated September 18, 2007 and Disclosure Regarding Real Estate Agency Relationships dated November 1, 2007; the Operating Agreement of Echo Trail Holdings, LLC dated July 6, 2006; Operating Agreement of Total Tire Recycling, LLC dated November 13, 1998; Draft Restated Operating Agreement of Total Tire Recycling, LLC dated January 20, 2000. Plaintiffs will produce copies of documents as they are in their possession in response to Defendants' Request for Production.

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100 Wilshir ;vard, Suite 1400
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6-2400

Dated: March 31, 2010

SPOLIN SILVERMAN COHEN & BOSSERMAN LLP

By: _____
GORDON E. BOSSERMAN
Attorneys for Plaintiffs

SPOLIN SILVERMAN COHEN & BOSSERMAN LLP
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Santa , CA 90401
-2400

VERIFICATION

I, Kay Harms, declare:

That I am the Tribal Risk Manager of Twenty-Nine Palms Enterprises Corporation and I also perform the same function for the Plaintiff Twenty-Nine Palms Band of Mission Indians of California, a Sovereign Native American Nation duly recognized by the government of the United States of America, and am authorized to make this Verification for and on its behalf; that I have read the foregoing document entitled **PLAINTIFF TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA RESPONSE TO DEFENDANT MONTEAU & PEEBLES; FREDERICKS & PEEBLES; AND FREDERICKS PEEBLES & MORGAN SPECIAL INTERROGATORIES**; that the responses contained in that document are not within my personal knowledge; that I am informed that there is no single person who has personal knowledge of all these matters; that the responses in this document are based upon information assembled by its employees and its agents; and that I am informed and believe that the responses based upon that information are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 31 day of March, 2010, at Coachella, California

Kay Harms

PROOF OF SERVICE

Twenty-Nine Palms v. Edwards, Case No. 30-2009 00311045

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 100 Wilshire Boulevard, Suite 1400, Santa Monica, CA 90401.

On April 1, 2010, I served the foregoing document described as: **PLAINTFF TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA RESPONSE TO DEFENDANT MONTEAU & PEEBLES; FREDERICKS & PEEBLES; AND FREDERICKS PEEBLES & MORGAN SPECIAL INTERROGATORIES** on the interested parties in this action as stated in the attached mailing list.

☒ Depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.

☒ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice is would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Santa Monica, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit. Executed on April 1, 2010, at Santa Monica, California.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

KRISTIN TUCKOSH

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Service List

Case No. 30-2009 00311045

Alan H. Schonfeld
Schonfeld, Bertsche, Preciado & Mahady, LLP
402 West Broadway, Suite 1890
San Diego, CA 92101

Attorney for Nada Edwards

Brian D. Peters
Waxler Carner Bodsky LLP
1960 East Grand Avenue
Suite 1210
El Segundo, CA 90245

Attorney for Rosette

John W. Sheller
Wendy Wen Yun Chang
Hinshaw & Culbertson LLP
11601 Wilshire Blvd.
Suite 800
Los Angeles, CA 90025

Attorneys for Defendants Fredericks Peebles & Morgan LLP, Fredericks & Peebles LLP, and Monteau & Peebles LLP

Bartley Louis Becker
Lewis Brisbois Bisgaard & Smith LLP
221 North Figueroa Street
Suite 1200
Los Angeles, CA 90012-2601

Attorney for Kovall

EXHIBIT D

SCOTT J. SPOLIN, SBN 48724
GORDON E. BOSSERMAN, SBN 65259
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Attorneys for Plaintiffs TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA, TWENTY-NINE PALMS ENTERPRISES CORPORATION, and ECHO TRAIL HOLDINGS, INC., a limited liability company

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA; TWENTY-NINE PALMS ENTERPRISES CORPORATION; and ECHO TRAIL HOLDINGS, INC., a limited liability company,

Plaintiffs,

vs.

NADA L. EDWARDS, an individual; GARY E. KOVALL, an individual; ROBERT A. ROSETTE, an individual; ROSETTE & ASSOCIATES PC, a professional corporation; MONTEAU & PEEBLES LLP, a partnership; FREDERICKS & PEEBLES, LLP, a partnership; FREDERICKS PEEBLES & MORGAN LLP., a partnership; and Does 1 through 100, inclusive,

Defendants.

Case No. 30-2009 00311045

Honorable David Velasquez, Dept. CX101

(1) MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR PERMISSION TO SUBMIT PETITION FOR COORDINATION TO THE JUDICIAL COUNCIL; and

(2) DECLARATION OF GORDON E. BOSSERMAN

Date: December 1, 2010
Time: 10:00 a.m.
Dept.: C-1
[Honorable Kim Dunning]

Date Action Filed: October 13, 2009

Discovery Cutoff: None
Motion Cutoff: None
Trial Date: None

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STATUTES

SPOLIN SILVERMAN COHEN & BOSSERMAN LLP
100 Wilsh[illegible] ulevard, Suite 1400
San[illegible] a, CA 90401
586-2400

INTRODUCTION

This Court should deny the motion by defendant Nada L. Edwards ("Edwards") for permission to submit a petition for coordination to the Judicial Council, because the criteria for coordination have not been met; because the coordination of the actions over a year after they were filed, and with no explanation by Edwards for such delay, would disrupt the orderly conduct of such actions; and, because the trial court in this Orange County has already denied similar relief to defendants, in a motion in which Edwards herself joined. The facts establish that this action and the pending action in Riverside County involve two entirely separate sets of defendants, and that the legal theories and claims involved in the present Orange County Legal Malpractice Action (which is brought exclusively against attorneys that represented the plaintiff Tribe and is based primarily on principles of professional malpractice) are factually and legally different from those involved in the Riverside County Financial Advisors Action (which is brought against the Tribe's financial and real estate advisors, and involve principles unique to those individuals and entities).

As a result, Edwards's claims of common factual and legal issues and of judicial economy, like premature reports of Mark Twain's death, are greatly exaggerated. Instead, Edwards's motion represents a blatant and tardy attempt at forum shopping, and to achieve, through the coordination process and through third party judges with no direct involvement in these cases, what she and her fellow defendants could not achieve through the assigned trial courts.[1] There is, therefore, simply no reason for this Court to prolong the process, or to further delay this action, and Edwards's motion should, therefore, be denied.

STATEMENT OF FACTS

A. The Plaintiffs To The Actions, And The Acts By Defendant Kovall.

Plaintiff Twenty-Nine Palms Band of Mission Indians of California (hereafter "the Tribe") is a federally-recognized Indian nation, which operates various businesses through

[1] Edwards's motion has been joined in by Windermere and Shambaugh, defendants in the Riverside County action. The arguments contained in their joinder are addressed separately in section E. of the Argument.

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its wholly owned companies. Beginning in 1997, defendant Gary E. Kovall, an attorney ("Kovall") began representing plaintiffs, eventually acting as the Tribe's general counsel. In that capacity, he represented the Tribe with respect to a variety of matters over an 8 + year period. Among other things, Kovall was responsible for the Tribe's decision to hire various lawyers and law firms (Defendants Nada Edwards, Monteau & Peebles, Fredricks & Peebles and Fredericks, Peebles & Morgan ["Peebles"], and Robert Rosette and Rosette & Associates ["Rosette"]) to represent the Tribe in litigation and other matters, including a lawsuit brought against the Tribe in Orange County Superior Court (the "Moskow action") in connection with certain real property located in Orange County that the Tribe had purchased and resold, and which the buyers contended contained mold and other hazards or defects (discussed below with respect to the "Orange County Legal Malpractice Action"). Kovall had a secret fee-splitting agreement with the Peebles and later with Rosette and exacted an agreement from Edwards to hire his daughter, her husband and his girl-friend who later became his wife. Kovall was also responsible for the hiring by the Tribe of David Alan Heslop ("Heslop") to advise the Tribe as to various business ventures, and the Tribe thereafter retained Heslop and paid him and his companies, Diversification Resources, LLC ("DRL") and National Demographics, Inc. ("NDI") hundreds of thousands of dollars to consult with and advise the Tribe on various opportunities. Among the many business opportunities on which Kovall and Heslop and his entities advised the Tribe was the 2007 purchase of approximately 47 acres (the "47 acres") located in the City of Coachella in Riverside County, near other Tribe-owned property (discussed below with respect to the "Riverside County Financial Advisor Action").

B. The Orange County Legal Malpractice Action

As indicated above, in his capacity as the Tribe's general counsel, Kovall hired various law firms to represent the Tribe in connection with litigation and various other matters. Among those litigation matters was the Moskow action, which arose out of the 2003 sale of a house in Laguna Beach owned by the Tribe to Dr. and Mrs. Lonnie J.

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Moskow. That action, was assigned to the Honorable Gail Andler of this Court, and involved claims of construction defects and personal injuries, including alleged exposure to mold. Kovall retained Edwards and Peebles and then Rosette. Kovall had relationships or affiliations with some or all of the firms, and received a handsome cut of the fees paid them for the services charged to the Tribe; however, neither Kovall nor the firms disclosed those relationships, or the benefits Kovall was receiving from the firms to the Tribe.

The attorneys and firms retained by Kovall to represent the Tribe in the Moskow action failed to tender the action to the Tribe's insurer and negligently represented the Tribe in various respects. Among other things, the attorney defendants used consultants and experts (including Peggy Shambaugh, then Kovall's girlfriend and now his wife) who had conflicts of interest or were subject to claims of bias and conflict; advised the Tribe to "commute" its insurance agreements with its general liability insurance carrier (in effect canceling the coverage it had for claims arising in those years), which caused the Tribe to lose coverage for the defense of the Moskow action (and, of course, increased Kovall's compensation by his share of the fees he received from Peebles and Rosette and maintained the fee stream to Edwards); and employed attorneys in that action who were unlicensed to practice in California. Kovall and Peebles also negligently handled other matters, including the 47 acres transaction described below in section C., and the "Emerald Solar" project, in which Kovall obtained a secret ownership interest that neither he nor Peebles disclosed to the Tribe.[2]

Based on the above negligence and breaches of the attorneys' professional duties

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[2] In her motion (pp. 6-8), Edwards sets forth a detailed discussion of the 47 acres transaction and the other business ventures and kickbacks involving Kovall and Heslop, despite the fact that Heslop is not a defendant to the Orange County Legal Malpractice Action, and despite the fact that Edwards's own involvement in that transaction was limited. Moreover, Edwards summarily discusses the Moskow action (motion, pp. 6:24-7:2), despite the fact that such action clearly constitutes the focal point of plaintiffs' claims against her and Rosette. See, e.g., the First Amended Complaint in the Orange County Legal Malpractice Action (Exhibit D to Edwards's Notice of Exhibits), ¶¶ 20-27, 60-64, 66, 71. Indeed, the FAC includes only one paragraph (¶ 34) dealing with Edwards's involvement in the 47 acres, and all but one of the specific allegations of negligence contained in ¶66(a) - (j) deal with Edwards's representation of the Tribe in the Moskow action. The reason for this, of course, is clear, namely that Edwards (as well as Windermere and Shambaugh, who have joined in the motion) is attempting to distort the nature and significance of the matters at issue in the Orange County Legal Malpractice in a false attempt to portray them as identical to those involved in the Riverside County Financial Advisor Action, and thereby justify coordination of the two actions.

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(including the "fee-splitting" scheme referred to above), the Tribe and its related entities (hereafter collectively "plaintiffs") filed the present action in Orange County, Case No. 30-2009 00311045 (the "Orange County Legal Malpractice Action") on October 13, 2009. The Orange County Legal Malpractice Action named as defendants Kovall and each of the other above named attorneys, and alleged claims for: (1) professional negligence; (2) breach of contract; (3) breach of the implied covenant of good faith and fair dealing; and (4) breach of fiduciary duty. At the time of filing, Plaintiffs designated this action as "complex." Each of the defendants to the Orange County Legal Malpractice Action are attorneys, and each of plaintiffs' claim in that action are predicated upon those attorneys' breaches of their professional duties to plaintiffs.

C. The Riverside County Financial Advisor Action.

As indicated above, Kovall represented the Tribe with respect to the acquisition of approximately 47 acres of real property located in Coachella, near the Tribe's casino, an investment that had been recommended to the Tribe by Heslop who, as indicated above, Kovall had retained on behalf of the Tribe. Kovall also persuaded the Tribe to utilize the services of Peggy Shambaugh ("Shambaugh"), and the real estate brokerage for which she worked (Windermere), as their broker in the transaction. At the time, Kovall and Shambaugh were cohabitating in a romantic relationship (and later married); however, they and Heslop (who was to manage the property for the Tribe) concealed that relationship, and the clear resulting conflict of interest, from the Tribe, in the hope of personally benefiting from the transaction. Shambaugh and Windermere received approximately $1 million, for less than two months of work while Heslop was made the sole manager of the LLC that took title to the 47 acres. The Plaintiffs paid approximately $10 million more for the property than it was actually worth.

In addition to the 47 acres transaction, Kovall and Heslop, and Heslop's associated companies, engaged in other acts of self-dealing, to the detriment of the Tribe. Kovall and Heslop persuaded the Tribe to retain Paul P. Bardos and his associated companies to

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perform construction work in connection with the Tribe's various business operations, and allowed Bardos and his companies (some of which were undercapitalized) to avoid the competitive bidding process, and charge the Tribe excessive and unreasonable fees for inadequate work. Heslop received kickbacks from Bardos for recommending him to the Tribe. Heslop then split those "kick-backs" with Kovall using Shambaugh and her company, Aina Concepts, Inc., to launder the funds for Kovall. Kovall and Heslop also persuaded the Tribe to initially invest over $5 million in a tire recycling venture ("Total Tire") in the Sacramento area, and set up the venture so that each of them acquired an ownership interest without investing any of their own monies. Kovall and Heslop also convinced the Tribe to invest an additional $1.5 million in the venture, all of which (as well as the original $5 million) was eventually lost. Heslop took an ownership interest in this venture, which was not properly disclosed to the Tribe.

Based on the above actions, plaintiffs on October 7, 2009 filed an action in San Luis Obispo County (where defendant Heslop and at least one of his companies reside), which was later transferred to Riverside County Superior Court (Case No. RIC 10006101) (hereafter the "Riverside County Financial Advisors Action"). That action named as defendants Heslop, his associated companies DRL and NDI, and Shambaugh and her company Windermere, and asserts claims for: (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; and (3) breach of fiduciary duty; and (4) professional negligence. The Riverside County Financial Advisors Action has not been designated "complex." Each of the defendants to the Riverside County Financial Advisor Action are financial advisors or real estate professionals, and none are attorneys.

D. Procedural Status Of The Respective Actions.

Plaintiffs do not dispute Edwards' characterization of both actions as being in the initial stages of pleading and/or discovery. (See motion, pp. 4:4, 8:4). Plaintiffs also do not seriously dispute Edwards's descriptions of the procedural status of the respective actions (motion, pp. 4-5, 8). However, plaintiffs wish to emphasize several salient facts relating to

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that status which Edwards has ignored or purposefully tried to downplay.

First, unlike the Orange County Legal Malpractice Action, in which all of the defendants are attorneys, and in which discovery has proceeded, for the most part, smoothly and efficiently (including all counsel's prompt agreement to enter into a stipulated protective order to safeguard the privacy rights of the parties), the Riverside County Financial Advisors Action has been marked by contentiousness and repeated law and motion practice that, frankly, represent little more than "billing events" on the part of defense counsel. Those law and motion matters have included: (1) motions based on defendant Windermere's refusal to produce documents or verify discovery responses based on the Fifth Amendment right against self-incrimination (even though Windermere, as a corporation, has no Fifth Amendment right); (2) motions arising out of Heslop's blanket invocation of his Fifth Amendment rights (including as to matters, such as his insurance coverage, that have no possible relation to the exercise of that right); (3) a motion brought by defendant NDI that sought among other things to compel plaintiffs to produce documents that plaintiffs have either already agreed to produce or which they have stated, under oath, they do not possess; and (4) motions by Plaintiffs to require the issuance of a protective order (after repeated offers by plaintiffs to stipulate to such an order), and to permit a limited exception to a protective order entered as to certain financial documents of Heslop to allow plaintiffs to show certain produced documents to their fidelity insurance carrier. The sheer volume and baselessness of the discovery motions in the Riverside County Financial Advisors Action has resulted in a court order appointing a discovery referee in that action. Moreover, although plaintiffs' counsel was initially willing to stipulate to coordinate the two actions for the limited purpose of discovery (see motion, pp. 1:19-20, 9:10-12), as a result of the actions by defendants in the Riverside County Financial Advisors Action, plaintiffs no longer support coordination of the actions for discovery or any other purpose. (See Declaration of Gordon E. Bosserman ["Bosserman declaration"], ¶ 5).

Second, while correctly noting, in passing, that defendant Kovall made an

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unsuccessful motion to transfer venue of the Orange County action to Riverside County (see motion, p. 8:9-11; Bertsche declaration, ¶ 12; Argument, section D.), Edwards conveniently fails to mention that: (1) Edwards in fact joined in that motion; and (2) that motion was based on the same arguments and sought essentially the same relief as the present coordination motion, and was rejected by the Court after considering all of the relevant facts and circumstances (Judge Velasquez). See Bosserman declaration, ¶ 6 and Exhibits B-E. Specifically, Kovall and Edwards argued that the gravamen of both actions was the purchase of the 47 acres (as opposed to the defense of the Moskow action or the other transactions alleged in the Riverside County Financial Advisors Action); that the interests of judicial economy justified transfer of this action to Riverside County (where the 47 acres are located, and to which the Financial Advisors Action had been transferred from San Luis Obispo); and that the two actions, after each being transferred, should be consolidated with one another in Riverside County. That is exactly the relief sought by Edwards in her present petition, the only difference being that it seeks relief from tribunals (i.e. this Court and the Judicial Council and/or a coordination judge) that are unfamiliar with and lack day to day responsibility for the respective actions—the classic "second bite at the apple."[3]

ARGUMENT

The foregoing facts establish that Edwards' present motion for permission to submit a petition for coordination to the Judicial Council is both procedurally improper and fails to establish that common questions of fact or law predominate, or that other grounds for coordination exist, and that the motion should, for several reasons, be denied by this Court.

A. Because, Contrary To Edwards's Claims, The Two Actions Involve Completely Different Defendants, Claims, And Legal Theories, In Which The Common Questions Of Fact Or Law Are Neither Significant Or Predominant, No Grounds For Coordination Exist.

As indicated above, a review of the allegations of the respective complaints establish

[3] It is worthy to note that the remaining defendants to this action -- i.e. Rosette and the various Peebles firms -- each opposed the proposed transfer.

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that the two actions involve different defendants, arise out of different circumstances and transactions and do not involve significant common questions of fact or law, and that, therefore, no grounds for coordination exist.

Cal. Code Civ. Proc. § 404 authorizes the coordination of one civil action with another pending in a different court where the actions are complex and "shar[e] a common question of fact or law," and where the actions meet the standards for coordination under Cal. Code Civ. Proc. § 404.1. The latter section, in turn, requires a finding that coordination will "promote the ends of justice," taking into account

> "whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and, the likelihood of settlement of the actions without further litigation should coordination be denied." (Emphasis added).

As a result, to justify coordination, there must be a showing that both actions are complex; and, not only that common issues of fact or law exist, but that they are significant, and that they predominate. Clearly, and as evidenced in the Statement of Facts (sections B. and C.), that is not the case here. First, only one action is designated "complex." Second, this Court has ruled in a similar motion by Kovall that this action should not be transferred to Riverside County after considering virtually the same factors. Although the two actions involve the same plaintiffs, they involve completely different defendants; i.e., no defendant to the present Orange County Legal Malpractice Action is a party to the Riverside County Financial Advisors Action, and vice versa. Moreover, the two actions involve very different claims, transactions, and legal theories. Although the two actions each arise to some extent from the actions of the Tribe's former general counsel Kovall, they involve materially different types of wrongdoing, different sets of relationships between the defendants and the Tribe, and entirely different standards of conduct that govern those relationships. Each of the defendants to the Orange County Legal Malpractice Action is an individual attorney or

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law firm. Each is, therefore, subject to the laws and regulations governing the legal profession, including not only the Rules of Professional Conduct and the applicable case law, but a completely separate statute of limitations (Cal. Code Civ. Proc. § 170.6). By contrast, all of the defendants in the Riverside County Financial Advisors Action are real estate or investment professionals (or their companies), whose obligations and responsibilities are governed by entirely different standards, including those applicable to brokers and other fiduciaries or agents. Further, although the Orange County action has been designated as "complex," the Riverside County action has not, a factor that must be considered by the Judicial Council and the court in determining whether or not to consolidate the two actions. (See Cal. Rules of Court, Rule 3.502).

In addition, and contrary to the distorted picture painted by Edwards (see, e.g., note 2 supra), there is no significant, much less predominant, overlap as to the facts and transactions involved in the respective actions. To the contrary, Edwards in her present motion engages in the same, cynical tactic used by Kovall in his unsuccessful motion to transfer venue; namely the focus on a single transaction -- i.e. the Tribe's purchase of the 47 acres in Riverside County -- that, while arguably constituting the primary transaction involved in the Riverside County Financial Advisors Action, is by no means the only transaction involved in that case, and is of at best only secondary significance in the Orange County Legal Malpractice Action. Each of the defendants to the latter action -- i.e. Kovall, Edwards, Rosette and the Peebles firms -- had a central role in the defense of the Moskow action, which plainly constitutes the central focus of that action, and which by contrast is of comparatively minor significance to the Riverside County Financial Advisors Action.[4] Similarly, although plaintiffs' claims against Kovall, Edwards, and Peebles in the Orange County action are predicated to some extent on the purchase of the 47 acres, the

[4] Specifically, the only relevance of the defense of the Moskow action to the Riverside County action lies in the fact that Heslop and/or Kovall retained certain persons or entities, including Shambaugh, as our expert to that action. By contrast, the actual conduct of that litigation, and the critical acts and omissions by the defendant attorneys in the Orange County action -- including the failure to tender the defense to the Tribe's carrier, the "commutation" of insurance, and the use of unlicensed attorneys -- have absolutely no relevance to the Riverside County action.

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involvements of Edwards and Peebles were limited to discrete aspects of that transaction (i.e. the review of sale documents and reassessment of the property for tax purposes, and the failure to disclose the Kovall-Shambaugh relationship). Although those aspects and activities caused significant damage to the Tribe, they pale in complexity to the extensive allegations of kickbacks and other self-dealing that are the subject of the claims against Shambaugh and Heslop in the Riverside action, and involve little if any overlap in proof between the two actions. As a result, the coordination of the two actions would not result in any significant judicial economies with respect to the 47 acres transaction. Finally, the Riverside County action involves much more than the claims pertaining to the 47 acres, including self-dealing by Heslop with respect to the "Total Tire" recycling transaction (in which he took an undisclosed interest in the same venture that he recommended to the Tribe, with the Tribe taking all of the financial risk) and the receipt of "kickbacks" from Paul Bardos, a contractor recommended to the Tribe by Kovall and Heslop.

Nothing in Edwards's motion compels a different conclusion. In addition to her myopic and cynical focus on the 47 acres and her exaggeration of the alleged overlap between the two actions, Edwards relies on entirely conclusory claims that the cases involve "common questions of fact or law and seek similar discovery" and "share predominating and significant questions of fact or law"; that "[i]dentical witnesses will be needed to testify in each action as to identical issues to be determined"; that "[t]here is a significant risk of inconsistent verdicts and double recovery if those two actions are not coordinated"; that the proposed coordination will "promote the ends of justice," "promote judicial economy," "save the court and parties' resources by avoiding duplicative discovery and motions, and will prevent inconsistent rulings"; and that coordination "will also allow the parties in both cases to develop work-product that is common to each case, particularly depositions and document requests." (See motion, pp. 1:12-17, 12:3-4, 12:20-21, 12:28-13:1, 14:3-6). However, conspicuously absent from Edwards's motion is any specific indication of who those supposedly "identical" witnesses are, or why the "issues" regarding, for example, the

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Tribe's prior knowledge regarding the 47 acres are relevant to Edwards's negligent acts with respect to the sale documents and tax reassessment, and what specific documents and depositions are supposedly "common" to each action. (Edwards appears to have made a strategic decision to allege such matters in conclusory fashion, because Kovall's motion to transfer, which contained specific but inaccurate claims of a similar nature was denied by Judge Velasquez.) Similarly, there is no indication as to why there is a supposed danger of inconsistent rulings or judgments, or how findings relating to the duties of an attorney and the breach of those duties are somehow relevant to the duties and breaches of real estate or financial advisors. Simply put, the claimed overlap of facts and issues between the two actions is more imagined than real, and does not justify the requested coordination.[5]

B. None Of The Other Relevant Factors -- Including The Convenience Of Parties, Witnesses Or Counsel, Or The Calendar Of The Riverside County Courts -- Justify Coordination Of This Action.

Moreover, and in addition to the lack of any significant, much less predominant common factual or legal issues, none of the other factors identified in Cal. Code Civ. Proc. § 404.1 support the requested coordination. The "issues" pertaining to the convenience of witnesses were already litigated in connection with Kovall's motion to transfer venue, in which Judge Velasquez agreed that a legal malpractice action that involves the negligent handling of an Orange County lawsuit and among other things involves the production of records located in this Court should be tried in Orange County. (See section D. infra). Similarly, the material differences between the conduct of the two actions (including the

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[5] Edwards's claim that plaintiffs have improperly "conduct[ed] discovery in one case related to issues in the other case and forc[ed] parties to appear in both actions" (motion, p. 1:7-8) is both false and ultimately irrelevant. Each of the business records subpoenas to which Edwards refers (motion, p. 13:8-12) were served with proper notice to all parties and/or consumers whose records were sought. Further, the claim that plaintiffs improperly sought records in this action relating to both Kovall and Shambaugh (motion, p. 13:12-16) conveniently ignores both the fact that the two are husband and wife, and that plaintiffs continued the motion once it became clear that her as well as his rights were implicated. And, of course, it ignores the fact that Judge Velasquez granted the plaintiffs' motion to enforce the subpoena over Shambaugh's objection. Similarly, with respect to plaintiffs' motion in this action to de-designate certain financial records pertaining to Bardos (motion, p. 13:16-19), Edwards conveniently fails to mention that Judge Velasquez properly held that Heslop had no protectible right regarding the bank records of completely different individuals or entities and, therefore, lacked standing to seek to quash the subpoena (a result that would have occurred regardless of the action in which the records were sought). And, there is no claim by Edwards that checks showing the receipt of "kickbacks" by Heslop and his companies), were not relevant to the Riverside action in which Heslop and his companies are parties (motion, p. 13:19-26). Finally, even if one were to accept the "spin" offered by Edwards, any occasional overlap in discovery between the two actions is both sporadic and minimal and, as evidenced above, is due primarily to the receipt of "kickbacks" by Kovall, Shambaugh, and Heslop, and do not affect Edwards or the remaining defendants to this action. As such, such a perceived overlap hardly justifies the coordination of actions that, as noted above, involve completely different defendants, claims, and legal theories.

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appointment of a discovery referee in the Riverside action but not this action); the congested civil calendar in Riverside County (see note 6 infra); and the likelihood that combining legal malpractice claims with claims against financial advisors will make it harder to settle any much less all of those claims, each additionally justify denial of the requested coordination. Moreover, the defendants in the Riverside County Financial Advisors Action have made it clear that they intend to fight a "scorched earth" battle with plaintiffs over every conceivable issue, such that, for example, they completely ignored repeated offers at a stipulation for a protective order, forcing plaintiffs to make a motion for same, while stating in their own sworn discovery responses that they would not produce certain information to plaintiffs because it was "confidential," "proprietary" or involved "trade secrets."

C. Edwards's Motion Is Untimely, And Coordination Would Disrupt Each Of The Present Actions Involving Plaintiffs.

This Court should also deny Edwards's motion because it is untimely and disruptive, in light of the age and duration of this action, and the likely effects of coordination on the orderly resolution of plaintiffs' claims. Edwards concedes, in her motion (p. 5:14), that the present action was filed on October 13, 2009. Moreover, unlike the Rosette and Peebles defendants, Edwards did not demur to the complaint, but instead filed a general denial on November 19, 2009. Yet Edwards nowhere explains why she waited nearly a year after the action was filed, and more than eight months after the filing of plaintiffs' First Amended Complaint (which made largely cosmetic changes in response to demurrers filed by the remaining defendants) on February 3, 2010, in which to seek coordination. Moreover, although Edwards's characterizations of both actions as being in the pleading and/or discovery stages are largely accurate, they are so only because of the intransigence demonstrated by the defendants in the Riverside County Financial Advisors Action, in filing or requiring plaintiffs to file needless discovery motions, refusing to stipulate to a protective order, and requiring the appointment of a discovery referee. Those actions have largely delayed progress in that case, and caused plaintiffs' counsel to rescind his prior willingness

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to coordinate the actions for discovery purposes. See Bosserman declaration, ¶ 5. Coordination, at this late date, would merely combine one action in which discovery and trial preparation has proceeded in an orderly and responsible fashion, with another in which it has not, and would require revisitation of prior orders (including the appointment of a discovery referee), as well as additional needless law and motion practice that would undermine the goal of obtaining prompt resolution of all of plaintiffs' claims.[6]

D. Edwards's Motion Represents An Improper Attempt At Forum Shopping And Reconsideration Of Judge Velasquez's Order Denying Kovall's Motion To Transfer The Orange County Legal Malpractice Action To Riverside County.

Edwards's motion is additionally defective, because it represents a cynical and improper attempt to obtain, in a different forum, a "second bite of the apple" as to issues that have already been determined against her and other defendants. As noted above in the Statement of Facts (section D.), and as Edwards conveniently fails to mention in her motion, the motion by Kovall to transfer venue of the Orange County Legal Malpractice Action to Riverside County -- in which Edwards joined -- was based on the same arguments (e.g. the alleged identity of transactions and issues) and sought the same relief (i.e. transfer and consolidation of this action with the Riverside County Financial Advisors Action). As a result, Edwards's present motion constitutes little more than a thinly disguised motion for reconsideration which, under Cal. Code Civ. Proc. § 1008: (1) must be made within ten (10) days of the initial order; (2) must be made to the same court; and (3) must be based on "new or different facts, circumstances, or law."

Here, Edwards has done none of those: instead, she waited more than three months after the denial of Kovall's motion, and a year after the action was filed, to seek

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[6] Moreover, coordination of the actions in the manner requested by Edwards would have the additional effect of transferring this case from Orange to Riverside County, a jurisdiction in which civil cases have been historically delayed due to the backlog of criminal cases, a backlog that has consistently drawn the attention of not only the media, but also the Supreme Court. See, e.g., People v. Engram, No. S176983, opinion issued October 25, 2010, in which the Court upheld the dismissal of certain criminal cases based on the lack of an available courtroom, and noted that Riverside courts have been "severely overburdened by the substantial number of criminal cases awaiting trial in that county" and have "devoted virtually all of its resources — superior court judges and courtrooms — ordinarily intended for the trial of civil cases instead to the trial of criminal cases, an effort that, at the time, seriously compromised that court's ability to conduct civil trials."

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coordination, and has merely recycled Kovall's shopworn claims of "judicial economy," including the mischaracterization of the claims and issues involved in the two actions. Finally, she has done so under the auspices of a petition for coordination, in a transparent attempt to bring this matter before another tribunal that, unlike Judge Velasquez, lacks detailed knowledge of the nature of or day to day operations of this action, and is unencumbered by his prior rulings. That action represents nothing more than cynical "forum shopping," and an attempt to revisit, in a hopefully more favorable arena, issues that have already been decided adversely to Edwards and Kovall, while simultaneously further delaying the two actions. This Court should decline to use the coordination process for such purposes, and should, for this additional reason, deny the present motion.[7]

E. The Joinder Filed By Defendants Windermere And Shambaugh Fails To Justify The Requested Coordination.

Finally, the arguments advanced by Windermere and Shambaugh in support of the motion merely parrot those of Edwards, and fail to support coordination. As indicated above in note 2, Shambaugh's claim that she has an interest in both actions (Shambaugh brief, p. 2) is based on a single series of bank subpoenas, and arises solely because she is the wife of Kovall (the principal target of those subpoenas), which hardly constitutes a significant overlap that would justify coordination. More important, Shambaugh overstates the factual and legal overlap between the two actions by claiming that they each involve defendants who "represented, assisted, or advised plaintiffs" (Id., p. 3), conveniently ignoring that the defendants provided materially different forms of "advice," as to different transactions, and were subject to completely different legal and professional standards. See section A. supra. Indeed, the only meaningful overlap between the two actions lies in the

[7] Among other things, the fact that Edwards is improperly attempting to use the coordination process to relitigate issues already decided adversely to her is dispositive of her argument that the present motion is, in essence, a ministerial one, and that the issue of coordination should simply be left to the Judicial Council or an appointed coordination judge. (See motion, p. 10:7-19). Indeed, by providing that a coordination petition can be submitted only after receiving permission from the trial court, and only after a noticed motion, Cal. Code Civ. Proc. § 404 and Cal. Rules of Court Rule 3.520(b)(1) clearly envision that this Court should not merely "rubber stamp" a request to submit such a petition, but should instead exercise its independent judgment in a manner that protects the integrity of that court and its processes. As a result, it is hard to envision a more compelling justification for the exercise of that judgment than where, as here, Edwards is seeking to conduct an "end run" around this Court by relitigating matters already decided adversely to her in a different forum and with no new facts or law.

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involvement of Kovall, as the Tribe's general counsel. For instance, and contrary to the implications by Shambaugh in her brief (p. 3), none of the defendants in the Riverside County action had anything to do with the Moskow action, except possibly Shambaugh herself, who charged Edwards perhaps $150.00 for performing a title check on the property, and only Kovall is alleged to have received improper "kickbacks." As a result, Windermere and Shambaugh seek to have the two actions combined not because of any judicial economies, but solely because it will enable them to better confuse the issues. Finally, the reliance by Windermere and Shambaugh on the appointment of a discovery referee as evidence that the Riverside County action is somehow "complex" (Shambaugh brief, p. 5), ignores the fact that, as indicated above (section A.), neither Judge Schwartz nor any other defendant to that action (including Windermere and Shambaugh) has ever taken the position that such action is "complex" or used that "fact" to justify the discovery referee. Instead, Shambaugh's cynical reliance on the unreasonable conduct by her and the other defendants which necessitated the appointment of a referee as "evidence" that the two actions should be combined calls to mind the classic definition of the Yiddish term "chutzpah," i.e. the person that kills both his parents, then asks for mercy on grounds that he is an orphan.

CONCLUSION

For the reasons set forth above, this Court should deny Edwards's motion.

Dated: November 16, 2010

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By: _____
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EXHIBIT E

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA; TWENTY-NINE PALMS ENTERPRISES CORPORATION; and ECHO TRAIL HOLDINGS, INC., a limited liability company,

Plaintiffs,

vs.

NADA L. EDWARDS, an individual; GARY E. KOVALL, an individual; ROBERT A. ROSETTE, an individual; ROSETTE & ASSOCIATES PC, a professional corporation; MONTEAU & PEEBLES LLP, a partnership; FREDERICKS & PEEBLES, LLP, a partnership; FREDERICKS PEEBLES & MORGAN LLP., a partnership; and Does 1 through 100, inclusive,

Defendants.

Case No. 30-2009 00311045

Honorable David Velasquez, Dept. CX101

(1) MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR PERMISSION TO SUBMIT PETITION FOR COORDINATION TO THE JUDICIAL COUNCIL; and

(2) DECLARATION OF GORDON E. BOSSERMAN

Date: December 1, 2010
Time: 10:00 a.m.
Dept.: C-1
[Honorable Kim Dunning]

Date Action Filed: October 13, 2009

Discovery Cutoff: None
Motion Cutoff: None
Trial Date: None

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DECLARATION OF GORDON E. BOSSERMAN

I, Gordon E. Bosserman, declare and state as follows:

1. I am an attorney at law duly licensed to practice before all the Courts of the State of California and am employed by the firm of Spolin Silverman Cohen & Bosserman LLP, attorneys of record herein for plaintiffs TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA, TWENTY-NINE PALMS ENTERPRISES CORPORATION, and ECHO TRAIL HOLDINGS, LLC, (hereinafter collectively "Plaintiffs").

2. I am the attorney at Spolin Silverman Cohen & Bosserman LLP primarily responsible for handling this action and the Riverside County action as to which coordination or consolidation is sought on behalf of Plaintiffs and, as such, I am familiar with the files and records of the firm maintained in connection with these actions, as well as the procedural history of both actions. Therefore, I have personal knowledge of all the facts set forth below and, if called upon to testify in Court to same, I could and would do so truthfully and competently.

3. Unlike the Orange County legal malpractice action, in which all of the defendants are attorneys, and in which discovery has proceeded, for the most part, smoothly and efficiently (including all counsel's prompt agreement to enter into a stipulated protective order to safeguard the privacy rights of the parties), the Riverside County financial advisors action has been marked by contentiousness and repeated law and motion practice that, frankly, represent little more than "billing events" on the part of defense counsel. Those law and motion matters have included, without limitation,

a. A motion based on defendant Windermere's refusal to produce documents or verify discovery responses based on the Fifth Amendment right against self-incrimination (even though Windermere, as a corporation, has no Fifth Amendment right);

b. Motions arising out of Heslop's blanket invocation of his Fifth Amendment rights (including as to matters, such as his insurance coverage, that have no

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possible relation to the exercise of that right);

c. A motion brought by defendant NDI that sought among other things to compel plaintiffs to produce documents that plaintiffs have either already agreed to produce or which they have stated, under oath, they do not possess;

d. A motion by plaintiffs to require the issuance of a protective order (I personally sent the defendants in the Riverside action two letters, the first of which was in March, 2010 and the most recent of which was in June, 2010, after all of the defendants, other than Kovall, in this action had stipulated to the form of the protective order after first making changes thereto);

e. A motion by plaintiffs to be allowed to show a limited number of documents covered by a protective order covering certain documents produced from Heslop's bank account so that plaintiffs, through their counsel, could show those documents to their insurance carrier in connection with a claim for loss covered by fidelity insurance;

f. A motion by Heslop to quash a subpoena for bank records of DRL which Heslop made and later withdrew after requiring plaintiffs to file opposition to it;

g. A motion by Heslop to quash a subpoena for certain bank records related to him personally, which was denied after the court issued a protective order related specifically to those documents;

h. An opposition which Heslop filed in this action to a motion made by the plaintiffs to release certain documents from a special protective order covering certain banking documents of non party Paul P. Bardos and his construction companies, which no party to this action opposed and which Bardos himself did not oppose; and

i. Heslop and Windermere also refused to stipulate to the Commissioner assigned in Riverside County to hear all discovery motions, thereby requiring the discovery motions involving them, and all other discovery motions, to be heard by the all-purpose judge to whom the Riverside action was assigned.

4. The sheer volume and baselessness of the discovery motions brought or

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required by the defendants in the Riverside County action has resulted in a court order appointing a discovery referee in that action. This order had nothing to do with whether the action was or was not complex. Attached hereto as Exhibit A is a true and correct copy of the transcript of that hearing. At page 4, lines 26-28, the Court states why it decided to appoint a Discovery Referee.

5. I was originally willing to stipulate to coordination of the two actions for the limited purpose of discovery. However, that was before the foregoing described baseless and time consuming discovery disputes generated by the intransigence of the defendants and their counsel in the Riverside action. I now oppose the coordination or consolidation of the two actions for any purpose. I believe, based on the conduct of the defendants in the Riverside County action, and their counsel, that coordination or consolidation of the two actions will only infect this action with the same problems that caused the Court in the Riverside County action to appoint a discovery referee.

6. On April 13, 2010, Kovall made an unsuccessful motion to transfer venue of the Orange County legal malpractice action to Riverside County. Kovall's motion, which was joined in by Edwards was based on the same arguments and sought essentially the same relief as the present coordination motion. Although Edwards' joinder was styled merely as a "non opposition," the actual pleading vigorously supported the grant of Kovall's motion. On June 14, 2010, the Kovall motion was rejected by this Court after considering all of the relevant facts and circumstances. Attached hereto as Exhibit B is a true and correct copy of the motion to transfer venue of the action filed by Kovall. Attached hereto as Exhibit C is a true and correct copy of the Opposition to the Kovall motion that plaintiffs filed. Attached hereto as Exhibit D is the joinder in the Kovall motion filed by Edwards. Kovall's motion was opposed not only by the plaintiffs in this action but also by the Peebles firm. Attached hereto as Exhibit E is a true and correct copy of the Opposition filed by the Peebles firm.

7. The "issues" pertaining to the convenience of witnesses were already litigated in connection with Kovall's motion to transfer venue, in which Judge Velasquez agreed that

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a legal malpractice action that involves the negligent handling of an Orange County lawsuit and among other things involves the production of records located in this Court should be tried in Orange County. Similarly, the material differences between the conduct of the two actions (including the appointment of a discovery referee in the Riverside action but not this action); the congested civil calendar in Riverside County; and the likelihood that combining legal malpractice claims with claims against financial advisors will make it harder to settle any much less all of those claims. Moreover, the defendants in the Riverside County action have made it clear that they intend to wage a "scorched earth" battle with plaintiffs over every conceivable issue, such that, for example, they completely ignored repeated offers of a stipulation for a protective order, forcing plaintiffs to make a motion for same, while taking the position in their own sworn discovery responses that they would not produce certain information to plaintiffs because it was claimed to be "confidential," "proprietary" or involve "trade secrets." Attached hereto as Exhibit F is a true and correct copy of NDI's response to special interrogatories asking for information about its relationship with Heslop, a relationship NDI has attempted to minimize in statements to the Court in the Riverside County action. To illustrate the hypocrisy to which I refer, I invite the Court's attention to NDI's responses to Special Interrogatory Nos. 11, 19, 25 and 26.

8. Edwards concedes, in her motion (p. 5:14), that the present action was filed on October 13, 2009. Unlike the Rosette and Peebles defendants, Edwards did not demur to the complaint, but instead filed an Answer on November 19, 2009. Moreover, although Edwards's characterizations of both actions as being in the pleading and/or discovery stages are largely accurate, they are so only because of the intransigence demonstrated by the defendants in the Riverside County action, in filing or requiring plaintiffs to file needless discovery motions, refusing to stipulate to a protective order, and requiring the appointment of a discovery referee. Those actions have largely delayed progress in that case, and caused me to rescind my prior willingness to coordinate the actions for purposes of discovery.

9. Consolidating the Riverside County action, at this late date, with this one,

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would merely combine one action in which discovery and trial preparation has proceeded in an orderly and responsible fashion, with another in which it has not, and would require revisitation of prior orders (including the appointment of a discovery referee), as well as additional unnecessary law and motion practice that would undermine the goal of obtaining prompt resolution of each of plaintiffs' claims.

10. Edwards now suggests that I or the plaintiffs have misused discovery or the protective orders entered in this case or discovery in the Riverside County action. This is a canard originated by Heslop and his minion companies in the Riverside County action. It is something they have repeatedly claimed in a variety of discovery disputes in an abortive attempt to support their meritless oppositions to legitimate discovery. I have challenged them to bring some type of formal application or motion for contempt against me, but as yet, they have declined this invitation. Apparently, they prefer innuendo to making a formal motion because if they made such a motion, they could be held responsible for making their false allegations.

11. I have also read the joinder in the Edwards' petition filed by Peggy Shambaugh, a defendant in the Riverside County action. She, of course, is the wife of Gary Kovall, a defendant in the Orange County action, and appears to be only too willing to do whatever she can to assist him in delaying this action against him. Thus, for example, she has filed her own motion to transfer venue of the Riverside County action, her own motion to stay that action, opposition to a motion to enforce a subpoena in this action addressed primarily to Kovall's bank account, and she has opposed a motion for a protective order in the Riverside County action while contending that information about her financial records should be the subject of a protective order. In addition, it appears that she has laundered hundreds of thousands of "kickback" dollars for her husband.

12. The subpoenas to the B of A to which Shambaugh refers in the introductory portion of her brief involved her because they were primarily subpoenas to accounts in the name of Kovall. As his spouse, plaintiffs suspected her name might also be on the account

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and so her name was added to the subpoenas and she was given a Notice to Consumer as to which she filed formal objections thereby necessitating the successful motion to enforce the subpoenas as against her.

13. The other subpoenas to Wells Fargo bank also require additional explanation to reveal the misdirection attempted in the joinder of Windermere and Shambaugh. There is also a subpoena in the Riverside County action to Wells Fargo related to commissions Shambaugh received and probably split with Kovall. I have met and conferred with Shambaugh's counsel on that one and we have reached an agreement that it may be enforced with certain limitations.

14. The other subpoenas to Wells Fargo relate to accounts at Wells Fargo we discovered Shambaugh had and into which we believe she deposited kick back checks from Heslop for Kovall's benefit. We believe this account may also be in the name of Kovall. We served a meet and confer letter on this. We are waiting on a response. These subpoenas are identical to the ones related to the B of A account, refereed to above, which were enforced by order of this Court over Shambaugh's objection. We included the limitations added by Judge Velasquez' order after we had to move to enforce the subpoenas to B of A. Since they are the same as those Judge Velasquez has already ruled on and the only difference is that we discovered the existence of another account, we have taken the position that she has no basis to oppose them. Also, one of the subpoenas relates to any account her company, Aina Concepts, Inc., has. We also discovered that she may be using this company to launder the kickbacks from Heslop to Kovall.

15. Shambaugh's argument that the two actions involve the same transactions is at best a half-truth and does not withstand careful examination. Kovall, as the Plaintiffs' general counsel, was involved in all transactions in both actions. For example, he received kickbacks paid by Bardos to Heslop and in turn to him through Shambaugh and her company. The other attorneys, however, are not directly related to the bulk of the transactions in the Riverside County action, except vicariously through Kovall. And, even

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where the attorneys may be directly related to a particular transaction identified in the Riverside County action, their duties and responsibilities are markedly different with respect to the transaction than are those of the defendants in the Riverside County action.

16. Probably most significant, however, is the fact that none of the defendants in the Riverside County action have anything to do with the Moskow action with the possible exception of Shambaugh who charged Edwards approximately $150 for researching information regarding the Moskow property. One might ask, what connection did Windermere have with the Moskow action or anything else alleged in this action other than the 47 acres deal. Yet, Windermere and Shambaugh seek to have the two actions combined. The reason for this is that Windermere apparently believes it can better confuse the issues, not that it seriously believes there will be any resulting economies.

17. As to kickbacks, only Kovall is alleged to have received kickbacks. The actual allegation in this action is that the Peebles firm and Rosette secretly split fees with Kovall. That is different from the kickbacks Bardos paid Heslop which he, in turn, split with Kovall after attempting to launder the funds through Shambaugh and her company. The secret fee-splitting issue is something that is unique to the lawyer malpractice action.

18. Windermere and Shambaugh refer to the possibility of inconsistent verdicts. That is speculation. On the other hand, there is no question that the duties and responsibilities of attorneys are very different from those of the other types of advisors, including real estate brokers.

19. Windermere and Shambaugh also claim there will be diseconomies involved with separate actions. There is no evidence to support that claim. On the other hand, it is clear that if this action is combined with the Riverside County action, the intransigence of the defendants in that action that led to the appointment of a Discovery Referee there is going to infect this action and make the prosecution or defense of the combined actions much more costly and time consuming.

20. Windermere and Shambaugh also claim that both actions are "complex." No

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defendant in the Riverside County action has ever attempted to have that action designated "complex." The judge in that action did not appoint a Discovery Referee because he felt the action was complex. He did so because the court was inundated with discovery motions made necessary by the defendants in that action. One needs only to read the proposed Order to appreciate the inaccuracy of Windermere and Shambaugh's position on this point. Of course, it says a lot about the remainder of their positions.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 16th day of November, 2010.

GORDON E. BOSSERMAN

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EXHIBIT F

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA; TWENTY-NINE PALMS ENTERPRISES CORPORATION; and ECHO TRAIL HOLDINGS, LLC., a limited liability company,

Plaintiffs,

vs.

NADA L. EDWARDS, an individual; GARY E. KOVALL, an individual; ROBERT A. ROSETTE, an individual; ROSETTE & ASSOCIATES PC, a professional corporation; MONTEAU & PEEBLES LLP, a partnership; FREDERICKS & PEEBLES, LLP, a partnership; FREDERICKS PEEBLES & MORGAN LLP., a partnership; and Does 1 through 100, inclusive,

Defendants.

Case No. 30-2009 00311045

PLAINTIFFS' PRETRIAL CONFERENCE STATEMENT

Pretrial Date:	March 28, 2012
Current Trial Date:	April 16, 2012
Department:	CX-101
Time:	9:00 a.m.
Judge:	Hon. Gail Andler

Date Action Filed: October 13, 2009

Pursuant to the Orange County Superior Court Rule 332, Plaintiffs submit their Pretrial Conference Statement.

1. THE PLAINTIFFS AND THEIR COUNSEL

The Plaintiffs are Twenty-Nine Palms Band of Mission Indians of California ("Band"), Twenty-Nine Palms Enterprises Corporation ("Enterprises") and Echo Trail Holdings, LLC. The Band is a federally recognized sovereign nation. The Enterprises is a federally recognized Indian corporation through which the Band conducts much of its business operations, including its casino, the Spotlight 29 Casino. Unless otherwise noted, the Band and the Enterprises are collectively referred to hereinafter as the "Tribe." Echo Trail Holdings, LLC ("ECH") is a limited liability company formed by the Band to take title to various parcels of real property, including the 47 acres.

The Tribe and ECH are represented in this action by Spolin Silverman Cohen & Bosserman LLP.

2. JURISDICTION AND VENUE

This action was filed on October 13, 2009. On June 14, 2010, the Court denied Defendant Gary Kovall's ("Kovall") motion to transfer this action to Riverside under CCP section 397(c), and on December 1, 2010, the Court (Department 1) denied the motion of Defendant Nada Edwards ("Edwards") for leave to file a motion to coordinate this action with the Riverside County action. Edwards recently settled out of this action.

3. RELATED LITIGATION

This action, the Orange County action, is against attorneys only. The Riverside County action is against non-attorney advisors of the Tribe only. It covers a variety of examples of fraud and malfeasance in addition to that which occurred in connection with the acquisition of the 47 acres identified below. The defendants in that action include special advisors, their affiliated companies and real estate brokers.

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4. STATEMENT OF CLAIMS AND DEFENSES

A. Background

Each of the remaining Defendants (predictably) attempt to distance him or itself from the conduct of Kovall and to minimize or obfuscate their own direct involvement in the injuries suffered by the Tribe. As to the Peebles and Rosette Defendants, this is fruitless, because it ignores the fact that they each had a secret relationship with Kovall and each purported to make him a member of their respective firms. Thus, not only are they liable for their own wrongdoing, they are vicariously liable for Kovall's actions as a "member" of their firm and as a co-conspirator with him in his wrongful acts.

Kovall began representing the Tribe in 1997, eventually acting as the Tribe's general counsel. In that capacity, he represented the Tribe with respect to a variety of matters over more than an 8 year period. Among these matters was the Total Tire Venture in Sacramento, California ("Total Tire"). At the time Kovall began representing the Tribe in connection with Total Tire, he did so as its attorney; later, he represented the Tribe on this matter as its general counsel. At the recommendation of Kovall and David Alan Heslop ("Heslop"), another trusted advisor of the Tribe and a Defendant in the Riverside County action, the Tribe spent approximately $5 million to purchase a tire recycling business (Total Tire) in the Sacramento area in 1997 and 1998. Kovall and Heslop took ownership interests in the Total Tire venture without, in the case of Kovall, properly disclosing his ownership interest as the Tribe's counsel.

B. The Conspiracy Begins

There were a number of other problems with Kovall's representation of the Tribe in connection with the acquisition of Total Tire. However, for purposes of this Statement, the Tribe will not focus on the acquisition of Total Tire, but rather on the additional investment of approximately $1.4 million in Total Tire, beginning in or about 2001. Kovall and his co-conspirator Heslop placed their own interests of salvaging something for their ownership interests in Total Tire ahead of the interests of the Tribe by convincing the Tribe to make

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$1.4 million in additional investments in Total Tire at a time when it was obvious to them that those funds would be lost. They did so because they believed the Tribe was made up of relatively uneducated and unsophisticated – but wealthy – Native Americans who would do anything they (Kovall and Heslop) recommended and who could, according to Kovall's way of thinking, afford the financial loss that was almost certain to occur. In doing so, Kovall, with the aid and assistance of Heslop, committed malpractice and breached his fiduciary duties to the Tribe. Kovall also convinced the Tribe to invest more money in the venture as a way of shielding himself against any personal liability concerning the operation of the business.

5. THE PEEBLES DEFENDANTS ENTER THE CONSPIRACY

Kovall continued to work on the Total Tire matter and to bill the Tribe for valueless services after he became associated with the Peebles Defendants until April 2006, and The Peebles Defendants themselves billed the Tribe for reviewing documents related to Total Tire but never disclosed the existence of the secret relationship or the unlawful split of fees or the clear conflicts involved with Kovall's ownership interest. Revealing the conflict would have put an end to the Peebles Defendants' work for the Tribe and an end to the unlawful fee splitting arrangement with Kovall. The Peebles Defendants began providing legal services to the Tribe in November, 2003. As noted above, these services (through Kovall) included work on Total Tire and also direct work related to financing taken out by the Tribe where Total Tire was a subject of a great deal of interest from the Tribe's lenders.

6. THE ILLEGAL FEE-SPLITTING AGREEMENTS

Prior to February 12, 2005, Defendant Robert Rosette ("Rosette") was a partner (indeed, a managing partner of at least one office) of Defendant Monteau & Peebles ("M&P"). M&P was the first Peebles Defendant in the group referred to as "The Peebles Defendants."Rosette introduced M&P to Kovall, who was at the time Plaintiffs' principal attorney. Kovall touted his ties to the Tribe in his negotiations with John Peebles, and the Peebles Defendants relied on his ability to deliver the Tribe's business in entering into the

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illegal fee splitting arrangement with Kovall. Kovall entered into a "fee-splitting" agreement with the Peebles Defendants, in which Kovall received a portion (20%) of all fees billed by the Peebles Defendants for work done for the Tribe, as evidenced by a written agreement, as well as instructions from John Peebles to the firm's accounting personnel as to the handling of payments to Kovall, e-mails from John Peebles confirming the payments, and Kovall's billing statements, which also show that Kovall was billing the Tribe for the same matters as the Peebles Defendants. In total, Kovall's cut of the fees paid by the Tribe to the Peebles Defendants was approximately $170,000 (plus Nov.03-Aug 08 $1,000/month = $57,000). Rosette knew of the agreement, both because he was the managing partner of M&P's Sacramento office, and because he discussed the terms of an identical form of fee-splitting agreement at the time Kovall was considering moving Plaintiffs' legal work to Defendant Rosette & Associates.

On February 12, 2005, Rosette was asked to leave M&P because he was not properly representing the interests of the clients of the Peebles Defendants. He then formed his own firm where, as indicated above, he continued the unlawful fee-splitting arrangement with Kovall after he induced Kovall to leave the Peebles Defendants and strike up an identical relationship with him in April of 2008. In addition, the Rosette Defendants actively concealed that arrangement from Plaintiffs. For example, when Kovall formally introduced Rosette and other members of his firm to the Tribe at a September 4, 2008 Tribal Council meeting, Kovall intentionally misrepresented to the Tribal Council, "I have no personal interest in it" (referring to Plaintiffs' selection of counsel). The statement was clearly a lie, and was never corrected by the Rosette Defendants who spoke to the Tribal Council immediately after Kovall. In addition, Rosette made it seem he had not seen Kovall in some time. This too was false. Kovall had had a number of communications with Rosette in advance of the meeting where he had coached Rosette on what he needed to say to get the Tribe's legal work.

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7. THE 47 ACRES TRANSACTION, AND THE CONCEALMENT OF AND FAILURE TO DISCLOSE THE ROMANTIC RELATIONSHIP BETWEEN KOVALL AND SHAMBAUGH

In addition to the illegal fee-splitting agreement, both the Peebles Defendants and the Rosette Defendants failed to disclose, and instead concealed from the Tribe, the fact that Kovall and Shambaugh, the real estate broker retained (at Kovall's recommendation) to handle the 47 acres transaction on behalf of the Tribe, were in a romantic relationship (she later became his wife). That relationship began, at the latest, in March 2004. Kovall brought Shambaugh with him on many of the trips he took to meet with the attorneys at the Peebles Defendants, including John Peebles. In addition, another attorney with the Peebles Defendants (Pat Lenzi) discussed with Nada Edwards the fact that Kovall and Shambaugh were living together. As a result, each of those attorneys clearly knew of the relationship, but failed to disclose and took steps to conceal it. Kovall never referred to Shambaugh by name on his expense records submitted to the Tribe for reimbursement for dinners he had relating to the acquisition of the 47 acres. Rather, he always referred to Shambaugh as "Windermere," so as to conceal his true relationship with Shambaugh from the Tribe. Shambaugh and Windermere received a commission of almost $1 million as the broker on the 47 acres transaction, which involved the purchase of the 47 acres for $31.7 million, at least $12 million more than it was worth. Shambaugh distributed a portion of the commission to Kovall and his children. The Peebles Defendants handled the negotiations with the banks for the loan to acquire the 47 acres. They reviewed the actual purchase and sale agreement and knew the price paid by the Tribe and knew that Shambaugh was the real estate agent on the deal. Yet, they never disclosed the existence of that relationship and of course never disclosed the fact that they had a secret "of counsel" relationship with Kovall nor that they were secretly paying him 20% or every dollar they billed the Tribe for work related to the acquisition. The concealment and failure to disclose the relationship also interfered with Plaintiffs' right to receive competent, unbiased advice from Kovall, the

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Peebles Defendants and Shambaugh and her employer, Windermere.

8. THE CONCEALMENT OF AND FAILURE TO DISCLOSE THE KICKBACKS FROM THE RETAINED EXPERT BARDOS TO KOVALL AND HESLOP.

Consistent with the intent of Kovall and the Peebles Defendants to profit from the their dealings with the Tribe (and as carried forward by the Rosette Defendants), Kovall exacted cash and in kind compensation from Paul P. Bardos and his construction companies for work they did for the Tribe on construction projects. Through the recommendation of Kovall and Heslop, Bardos was able to secure three to six construction contracts from the Band and/or the Enterprises. Kovall then "negotiated" the terms of the contracts between the Tribe and Bardos and "supervised" Bardos' performance of those contracts, all the while receiving a share of the undisclosed kickbacks Bardos was paying for the work. Bardos paid over $683,000 in cash payments of kickbacks to Kovall and Heslop. In addition, Bardos did work for Kovall on the remodeling of Kovall's cabin in Big Bear for less than the value of the services and materials. When Bardos found out that the Tribe had learned of a portion of this scheme, his statement was "Oh, f--k." Kovall also saw to it that Bardos was retained by Edwards and the Peebles Defendants and then by the Rosette Defendants as an expert and consultant for the Tribe in connection with the Moskow action. The kickback arrangement between Kovall and Bardos began while Kovall was associated with the Peebles Defendants and continued after the Rosette Defendants took over the legal representation of the Tribe.

9. THE FAILURE TO PROPERLY TENDER THE MOSKOW ACTION, AND THE INSURANCE COMMUTATION AGREEMENT

In addition to the numerous acts of legal malpractice committed by each of the defendants with respect to the Moskow action, first Edwards and the Peebles Defendants and then Edwards and the Rosette Defendants failed to properly tender the defense of the Moskow action to the Tribe's insurance carriers. As to the Peebles and Rosette Defendants,

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this was not the product of mere negligence. In addition, while Kovall and the Peebles Defendants represented the Tribe (including during the time that Kovall was an undisclosed member of the Peebles firm), they recommended that the Band enter into a series of "commutation" agreements with its insurers, which resulted in a loss of coverage that could have been used to defend the Tribe in the Moskow action, while failing to advise the Tribe of the likely consequences of the commutation of coverage. In addition to constituting clear malpractice, those actions, coupled with the "fee-splitting" agreements referred to above, suggest that the Peebles and Rosette Defendants took those steps deliberately, since an agreement by an insurer to defend the Moskow action would likely have resulted in the selection of other counsel and would have deprived the Peebles Defendants of hundreds of thousands of dollars in fees on the Moskow action, and would have deprived Kovall of his cut of those fees. After the Rosette Defendants assumed control of the defense of the Tribe in the Moskow action, they too took no action to properly tender the defense of the Moskow action to the correct insurer. Rather, they continued to bill the Tribe tens of thousands of dollars for defense of the Moskow action, all while giving Kovall his cut of the fees collected from the Tribe. Kovall would receive their statements and approve them in much the same way he approved Bardos' bills, knowing he was getting a cut or kickback from every dollar he approved.

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10. THE USE OF UNLICENSED ATTORNEYS

During the time that they represented the Tribe, the Peebles Defendants and the Rosette Defendants utilized the services of certain attorneys who were not even employees of the firm and/or who were not even licensed to practice in California. Those intentional acts, like the illegal fee-splitting agreement, violated the Rules of Professional Conduct and were never disclosed to the Tribe. To the contrary, Rosette falsely touted the knowledge and experience of the attorneys who were supposed to be employed by the Rosette Defendants. Moreover, there was no reduction in the rates billed to the Tribe for the services of unlicensed or non-employee attorneys (e-mails sent to and from Rosette indicate that one

such attorney billed 80 hours on a matter pertaining to the Moskow action, which was termed "laughable" by Rosette). This stands in contrast to the knowingly false statements Kovall and Rosette made to the Tribe's Tribal Council to secure the Tribe's legal work for the Rosette Defendants.

11. DAMAGES CAUSED BY DEFENDANTS' MISCONDUCT

A. Prohibited and undisclosed fee splitting, excessive and unreasonable billing

- $906K in fees paid to the Peebles Defendants.
- $433K in the fees paid to the Rosette Defendants.
- $350K in the fees paid to Edwards.
- All of the fees shared with Kovall. The Peebles Defendants paid Kovall at least $169K, the Rosette Defendants paid at least $25K in secret fee splits.
- The fees paid by the Tribe to Kovall during the existence of his relationship with the Peebles and Rosette Defendants, total of $2,390,000.

B. The Moskow action

- Incompetent litigation services.
- Incompetent insurance policy commutation.
- Failure to tender claims to insurance carrier allowing attorney defendants to continue to bill Tribe and split fees with Kovall.
- $550K settlement of fully defensible claims.
- At least $646K of the fees paid to Sheppard Mullin to handle the Moskow action.

C. Total Tire Venture

- Improperly disclosed interest of attorney.
- Failure to protect client's funds/investment and incompetent and conflicted legal and investment advise.
- Procured excessive investment.

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- At least $1.4M, the amount of the Tribe's additional investment in the Total Tire venture at Kovall's recommendation (when it was clear that the Tribe would lose the investment).

D. 47 acres purchase

- Counseled purchase price $12.5M above market or fair value.
- Conflict of interest re: broker's commission $951K.
- Property tax costs of $82K (on price paid in excess of value).
- $9K cost of tax re-assessment appeal.

E. Consultants/Vendors kickbacks and self-dealing

- Bardos paid at least $683K in kickbacks to Heslop then to Kovall.
- NDI, a Heslop company, was paid at least $485K. (From this amount NDI paid at least $19K to Kovall.)
- DRL, another Heslop company, was paid at least $50K (from this amount DRL paid at least $7,155 to Heslop, $14,378 to Shambaugh).
- Heslop (as manager of Echo Trail Holdings, LLC) was paid at least 33K.

F. Attorney fees and costs incurred (per contractual agreements).

Dated: March 27, 2012

SPOLIN COHEN MAINZER & BOSSERMAN LLP

By: _____
GORDON E. BOSSERMAN
Attorneys for Plaintiffs TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA; TWENTY-NINE PALMS ENTERPRISES CORPORATION; and ECHO TRAIL HOLDINGS, LLC., a limited liability company

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PROOF OF SERVICE

Twenty-Nine Palms v. Edwards, Case No. 30-2009 00311045

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 11601 Wilshire Boulevard, Suite 2410, Los Angeles, CA 90025

On March 27, 2012, I served the foregoing document described as:

PLAINTIFFS' PRETRIAL CONFERENCE STATEMENT

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

James J. Banks
Brian M. Englund
Banks & Watson
813 Sixth Street, Suite 400
Sacramento, CA 95814-2403

Brian D. Peters, Esq.
Waxler Carner Bodsky LLP
1960 East Grand Avenue, Suite 1210
El Segundo, CA 90245

☒ **(BY ELECTRONIC SERVICE)** Based on an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification address: bpeters@wcb-law.com; benglund@bw-firm.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 27, 2012, at Los Angeles, California.

Sarah C. Choi

EXHIBIT G

GORDON E. BOSSERMAN, SBN 65259
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Attorneys for Plaintiffs TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA, TWENTY-NINE PALMS ENTERPRISES CORPORATION, and ECHO TRAIL HOLDINGS, LLC, a limited liability company

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

TWENTY-NINE PALMS BAND OF MISSION INDIANS OF CALIFORNIA; TWENTY-NINE PALMS ENTERPRISES CORPORATION; and ECHO TRAIL HOLDINGS, LLC, a limited liability company, Plaintiffs, vs. NADA L. EDWARDS, an individual; GARY E. KOVALL, an individual; ROBERT A. ROSETTE, an individual; ROSETTE & ASSOCIATES PC, a professional corporation; MONTEAU & PEEBLES LLP, a partnership; FREDERICKS & PEEBLES, LLP, a partnership; FREDERICKS PEEBLES & MORGAN LLP., a partnership; and Does 1 through 100, inclusive, Defendants.	Case No. 30-2009 00311045 Honorable Gail A. Andler, Dept. CX101 **PLAINTIFFS' TRIAL BRIEF** Date Action Filed: October 13, 2009 Trial Date: June 4, 2012

Plaintiffs Twenty-Nine Palms Band of Mission Indians of California, Twenty-Nine Palms Enterprises Corporation, and Echo Trail Holdings, LLC. (hereafter collectively "Plaintiffs" or "the Tribe") provide the within Trial Brief in connection with the scheduled

trial of their claims against Defendants Monteau & Peebles LLP, Fredericks & Peebles, LLP, and Fredericks Peebles & Morgan LLP (collectively, the "Peebles Defendants").[1]

I. STATEMENT OF FACTS

In the early 2000's, the Tribe used as its in-house lawyer, a man named Gary Kovall ("Kovall"). Attorney Kovall had offices in the Tribe's business offices, and he handled basically all of the routine legal affairs for the Tribe and the businesses it owned. The Tribe needed help from lawyers and other professional vendors often, as the tribal members were not sophisticated or highly educated. Unknown to the Tribe, attorney Kovall negotiated with the Peebles Defendants to set up a kickback scheme whereby attorney Kovall would refer legal work from the Tribe to the Peebles Defendants, and attorney Kovall would receive a kickback of a portion of the fees they charged on all of the work they did for the Tribe. To implement this scheme, attorney Kovall became "of-counsel" to the Peebles Defendants, which basically amounted to attorney Kovall becoming a secret member of the Peebles Defendants. The deal for this kickback conspiracy was contained in a secret written agreement between attorney Kovall and the Peebles Defendants, executed in 2003.

From that time forward, attorney Kovall referred a very substantial amount of legal work for the Tribe to the Peebles Defendants, attorney Kovall approved payment by the Tribe of all of the Peebles Defendants' bills (whether reasonable or not), and caused the

[1] The instant action is stayed as against Defendant attorney Gary Kovall, based on his claim that he was under a criminal investigation. On May 9, 2012, a Federal Grand Jury Indictment was handed down against Kovall and three other co-conspirators, who are not parties to this action. A copy of the Indictment is attached as Exhibit "A". Each criminal defendant is a professional providing services to the Tribe, using the same methods as the Kovall/Peebles scheme employed. The remaining defendants in this action, Attorneys Edwards and Rosette have settled with Plaintiffs. Attorney Edwards has been dismissed from the action. Attorney Rosette has just obtained Court approval of its settlement.

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Tribe, from the Tribe's money, to pay the Peebles Defendants in full. Upon the Peebles Defendants receiving payment, they would pay twenty percent of every dollar collected back, under the table, to attorney Kovall, a secret kick-back. None of this was ever disclosed to the Tribe but was only discovered from bank records after attorney Kovall had resigned.

One result of the secret kickback conspiracy between attorney Kovall and the Peebles Defendants was that the Tribe ran up legal bills with the Peebles Defendants of almost $1 million. Another result, and much more damaging to the Tribe, was the fact that the Peebles Defendants kept the kick-back scheme secret from their client, the Tribe, and as a consequence, prohibited the Tribe from ever learning that neither its in-house lawyer nor the Peebles Defendants were loyal to the Tribe. These lawyers were instead loyal only to their own pocketbooks. This resulted in poor, incompetent and ultimately damaging legal services being provided to the Tribe in the areas of transactional law, litigation, and insurance law, to name a few. The secret kickback scheme prevented both the Peebles Defendants and attorney Kovall from telling the Tribe anything that would impede or interfere with the flow of new and more legal business from the Tribe. The more legal work, the more money for the kickbacks, leading, as these things do, to damages to the Tribe in a variety of areas.

Of course, had the Peebles Defendants told the Tribe at the very beginning that their in-house counsel was seeking illegal, under the table kick-backs, the Tribe would have fired attorney Kovall and would never have done business with the Peebles Defendants. All of the damages that the Tribe incurred would have been avoided. Instead, the lawyers kept

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quiet and lined their pockets at the expense of the Tribe to the tune of many millions of dollars.

Attorney Kovall entered into similar kick-back schemes with other attorneys and with other professionals he introduced to the Tribe, including the Tribes realtor (Peggy Shambaugh), its contactor (Paul Bardos) and its business consultant and real estate manager (David Heslop). These professionals have already been indicted. (See pg. 2, fn. 1, supra.) The overall conspiracy followed the same pattern.

II. PLAINTIFFS ARE ENTITLED TO RECOVER FOR NEGLIGENCE, BAD FAITH, AND BREACH OF FIDUCIARY DUTY BASED ON THE ILLEGAL AND UNETHICAL SECRET FEE-SPLITTING AGREEMENT BETWEEN KOVALL AND THE PEEBLES DEFENDANTS.

Plaintiffs will establish at trial that Defendant Kovall, counsel for the Tribe, entered into an agreement with the Peebles Defendants by which Kovall would receive twenty percent (20%) of all monies paid by the Tribe to the Peebles Defendants for legal services; and that the Peebles Defendants failed to disclose or obtain the Tribe's written consent to this agreement, and actively concealed its existence from Plaintiffs. Those actions plainly violated both the applicable ethical rules and Defendant's fiduciary duties to Plaintiffs, and justify judgment in favor of Plaintiffs on their claims for professional negligence, breach of contract, and breach of fiduciary duty.

A. The Fact That An Attorney Has Violated The Rules Of Professional Conduct Constitutes Evidence Of Professional Negligence And Breach Of His Or Her Fiduciary Duties To The Client.

The law is clear that a violation of the Rules of Professional Conduct constitutes evidence of legal malpractice, as well as breach of fiduciary duty. (See, e.g., BGJ Associates, LLC v. Wilson, 113 Cal.App.4th 1217, 1227 (2004) ("the rules [of Professional

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Conduct], 'together with statutes and general principles relating to other fiduciary relationships, all help define the duty component of the fiduciary duty which the attorney owes to his or her client'"); see also Ramirez v. Nelson, 44 Cal.4th 908, 918 (2003); Evidence Code § 669(a) (violation of law constitutes evidence of a defendant's failure to exercise due care, and therefore his or her negligence, even if it does not give rise to a private cause of action).

B. A "Fee-Splitting" Agreement Between Attorneys Is Illegal And Unenforceable, Unless It Is Disclosed And Agreed To In Writing By The Client.

The law is equally clear that the fee-splitting agreements found in this case between Kovall on the one hand and the Peebles Defendants on the other, violate the applicable ethical rules, because both Kovall and the Peebles Defendants failed to disclose (and, indeed, actively concealed) those agreements from Plaintiffs. Rule 2-200 of the Rules of Professional Conduct, entitled "Financial Arrangements Among Lawyers," provides in pertinent part as follows:

> " (A) A member shall not divide a fee for legal services with a lawyer who is not a partner of, associate of, or shareholder with the member unless:
>
> (1) The client has consented in writing thereto after a full disclosure has been made in writing that a division of fees will be made and the terms of such division; and
>
> (2) The total fee charged by all lawyers is not increased solely by reason of the provision for division of fees and is not unconscionable as that term is defined in rule 4-200."

In addition, Rule 3-300, entitled "Avoiding Interests Adverse to a Client," provides in pertinent part as follows:

> "A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a

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client, unless each of the following requirements has been satisfied:

> (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and
>
> (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and
>
> (C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition."

See also Cal. Rules of Professional Conduct, Rule 4-200(A) ("A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee"); Bus. & Prof. Code § 6068(m) ("It is the duty of an attorney to. . .respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services"); Cal. Rules of Professional Conduct, Rule 3-500 ("A member shall keep a client reasonably informed about significant developments relating to the employment or representation").

The purpose of the prohibition against undisclosed fee-splitting agreements is to protect the public and promote respect for and confidence in the legal profession (Chambers v. Kay, 29 Cal.4th 142, 157 (2002)), including protecting clients from the inherent potential conflicts of interest created by such agreements. (Mark v. Spencer, 166 Cal.App.4th 219, 225 (2008)). The disclosure and consent requirements in Rule 2-200 are also intended to safeguard the clients' right to know how their legal fees are determined and the extent of, and basis for, their attorneys' sharing of fees. (Mark, supra, 166 Cal.App.4th at 226; Huskinson & Brown, LLP v. Wolf, 32 Cal.4th 453, 459 (2004)). An undisclosed fee-

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splitting agreement is void and unenforceable as against public policy. (Chambers, supra, 29 Cal.4th at 155-59; see also Margolin v. Shemaria, 85 Cal.App.4th 891 (2000); see also Scolinos v. Kolts, 37 Cal.App.4th 635 (1995)).[2]

C. The Secret, Illegal Fee-Splitting Agreement Between Kovall And The Peebles Defendants Deprived Plaintiffs Of Their Right To Competent, Unbiased, And Conflict-Free Legal Representation, And Constitute Fraud, And A Breach Of Defendants' Ethical And Fiduciary Duties To Plaintiffs.

Here, the fee-splitting agreement entered into by Kovall with the Peebles Defendants (which Plaintiffs' experts have accurately characterized as involving "kickbacks" or commercial bribes)[3], and the active concealment of the agreement from Plaintiffs, clearly violated each of the above ethical standards.

III. THE PEEBLES DEFENDANTS ARE VICARIOUSLY LIABLE FOR THE ACTS AND OMISSIONS OF ALL CO-CONSPIRATORS, IN LIGHT OF THE DEFENDANTS' CONSPIRACY TO INJURE PLAINTIFFS.

In addition to the damages arising from the respective undisclosed kickback agreements and in addition to the Defendants' direct liability for their respective legal acts and omissions with respect to the specific legal services that are the subject of this action,

---

[2] The same is true with respect to the Peebles' firm's use of attorneys that were unlicensed to practice in California to perform work for plaintiffs, who were not informed of and did not consent to the use of such unlicensed attorneys. See, e.g., Birbrower, Montalbano, Condon & Frank v. Superior Court, 17 Cal.4th 119, 135-37 (1998); Longval v. Workers' Comp. Bd., 51 Cal.App.4th 792, 803 (1996).

[3] See, California Penal Code § 641.3 [Commercial bribery]. Penal Code Section 641.3 provides that any person who solicits, accepts, or agrees to accept money or anything of value from a person other than his or her employer without the knowledge or consent of the employer, in return for using or agreeing to use his or her position for the benefit of that other person, and any person who offers or gives the employee money or anything of value under those circumstances is guilty of commercial bribery.

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Plaintiffs will hold the Peebles Defendants vicariously liable for each of the acts and omissions of the other professional co-conspirators, because those acts arose as a result of a conspiracy, whose goal and design was to injure the Peebles Defendants' client, the Tribe.

A. In The Scheme To Defraud Or Otherwise Harm Plaintiffs, The Peebles Defendants Are Liable For Each Of The Torts Committed By The Others.

Under the doctrine of civil conspiracy, a person that conspires to injure a third party may be held responsible as a joint tortfeasor, regardless of whether he or she directly participated in the harmful act, so long as they share with the immediate tortfeasors a common plan or design in its perpetration. (See, e.g., Wyatt v. Union Mortgage Co., 24 Cal.3d 773, 784 (1979) By participating in a civil conspiracy, a coconspirator effectively adopts as his or her own the torts of other coconspirators within the ambit of the conspiracy, and so incurs liability co-equal with the immediate tortfeasors. (Id.; see also Applied Equipment Corp. v. Litton Saudi Arabia Ltd., 7 Cal.4th 503, 511 (1994)). Such liability may be imposed even if the defendant committed no overt act whatsoever and gained no benefit therefrom. (Mox Inc. v. Woods, 202 Cal. 675, 678 (1927)). To establish such liability, a plaintiff need only show the formation and operation of the conspiracy, and damage resulting to plaintiff from an act or acts done in furtherance of the common design. (Applied Equipment Corp., 7 Cal.4th at 511; see also Doctors' Co. v. Superior Court, 49 Cal.3d 39, 44 (1989).

A party may, by joining an existing conspiracy, be rendered liable for tortious acts occurring prior to doing so. (See, e.g., DeVries v. Brumback, 53 Cal.2d 643 (1960)). In DeVries, the Supreme Court rejected the defendant's argument that, because he joined the

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conspiracy to dispose of certain property stolen from the jewelry store of plaintiff's assignor only after the property was stolen, he could not be held liable for the initial theft. The Court distinguished between the law of criminal conspiracy (under which the focus is the agreement to commit the unlawful act), and that of civil conspiracy, in which the focus is the damage resulting from an overt act or act done pursuant to the common design. (Id. at 649). The Court summarized its holding as follows:

> "It is the settled rule that 'to render a person civilly liable for injuries resulting from a conspiracy of which he was a member, it is not necessary that he should have joined the conspiracy at the time of its inception; every one who enters into such a common design is in law a party to every act previously or subsequently done by any of the others in pursuance of it.'" Having been found to have joined and actively participated in the continuing conspiracy to convert, appellant became liable for the previous acts of his coconspirators under the rules relating to civil liability, and the fact that some of the missing goods may never have come into his possession would not absolve him from liability." (See Id. at 648).

Every person who joins and actively participates in an existing conspiracy with knowledge of the acts of his co-conspirators becomes a party to every act previously or subsequently done by any of the others in furtherance of the conspiracy. Additionally, a person who acts solely as an agent for a conspirator is still liable for his participation in the conspiracy even if he or she is unacquainted with the details of the scheme. De Vries, supra, 53 Cal.2d at 648-50; see also Schick v. Lerner, 193 Cal.App.3d 1321, 1328 (1987). And, "when a civil conspiracy is properly alleged and proved, the statute of limitations does not begin to run on any part of a plaintiff's claims until the 'last overt act' pursuant to the conspiracy has been completed." (Wyatt, supra, 24 Cal.3d at 788; see also Aaroe v. First American Title Ins. Co., 222 Cal.App.3d 124, 128 (1990) ("The last overt act doctrine prevents the statute of limitations from beginning to run in certain cases, 'even after the

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fraud is discovered ...,' until the commission of the last overt act pursuant to the conspiracy")).

The elements of an action for civil conspiracy are: (a) the formation of the conspiracy; (b) operation of the conspiracy; and (c) damage resulting to the plaintiff from an act or acts done in furtherance of the common design. Applied Equip. Corp. v. Litton Saudi Arabia Ltd., 7 Cal.4th 503, 511 (1994). The formation of an alleged conspiracy depends on projected joint action. Wetherton v. Growers Farm Labor Ass'n., 275 Cal.App.2d 168, 176 (1969). That is, the conspirators must share a common purpose (Harris v. Capitol Records Distrib. Corp., 64 Cal.2d 454, 462 (1966)), and must have united or cooperated with each other in inflicting a wrong on the plaintiff. Mox, supra, 202 Cal. at 677-78. Indeed, it is sufficient if the plaintiff can merely show the defendant's knowing participation in a common plan or design to commit an act or acts constituting a civil wrong. Loeb v. Kimmerle, 215 Cal. 143, 150-51 (1932); Black v. Sullivan, 48 Cal.App.3d 557, 566-67 (1975). It goes without saying that the Peebles Defendants, as attorneys, knew full well all along the harm they were doing, the harm that was being done by others, and above all, they knew it was wrong. They were attorneys!

IV. PEEBLES IS VICARIOUSLY LIABLE FOR THE IMPROPER ACTS OF KOVALL, BOTH AS A CO-CONSPIRATOR AND IN LIGHT OF KOVALL'S STATUS AS "OF COUNSEL" TO, AND AN AGENT OF, THE PEEBLES FIRM.

In addition to its vicarious liability as a co-conspirator for the acts of Kovall and the other professionals, the Peebles Defendants are additionally vicariously liable because, unbeknownst to Plaintiffs, Kovall acted as "Of Counsel" to the Peebles Defendants, including with respect to the transactions alleged in this action.

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The law is clear that a law firm is vicariously liable for the wrongful acts or omissions of its principals, employees, and associates. (See, e.g., PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal.App.4th 384, 391 (2007), citing 1 Mallen & Smith, Legal Malpractice Vicarious Liability § 5.8 p. 609 (2007 ed.)); see also Moore v. State Bar, 62 Cal.2d 74, 80-81 (1964) (attorney liable for failing to supervise another attorney retained to file answer on behalf of client). As a result, absent an agreement to the contrary, the retention of one attorney in a law firm constitutes the retention of the entire firm, including all of its partners, members, and associates. (PCO, supra, at 392, citing Streit v. Covington & Crowe, 82 Cal.App.4th 441, 445 (2000); Mallen & Smith, supra, §5.3 p. 546). Moreover, the above principles apply fully to attorneys, like Kovall, that are designated as "Of Counsel," who have been treated as a member of the firm, i.e. an affiliated lawyer, for disqualification purposes (1 Mallen & Smith Legal Malpractice Vicarious Liability § 5.7 p. 374 (2011 ed.)) and, from the perspective of the client, as the equivalent of a partner or associate. (See Id., p. 376 (stating that "unless limitations in the 'Of Counsel's' relationship are specifically directed to a client's attention, the firm can be vicariously liable for the conduct of such a person who acts within the actual or apparent scope of the firm's practice and for the firm")).

The evidence at trial will establish that Kovall, unbeknownst to Plaintiffs, acted as "Of Counsel" to the Peebles Defendants and acted within the scope of his authority while steering the Tribe's business to the firm. As a result, the Peebles Defendants are vicariously liable for the acts and omissions of Kovall.

//

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V. PLAINTIFFS ARE ENTITLED TO PUNITIVE DAMAGES, BASED ON THE ACTIVE AND WILFUL CONCEALMENT OF THE "KICKBACKS" PAID TO KOVALL AND OTHER BREACHES OF DEFENDANTS' FIDUCIARY AND PROFESSIONAL DUTIES AND FRADULENT CONDUCT.

In addition to compensatory damages, Cal. Civil Code § 3294(a) permits an award of punitive damages in a tort action where the plaintiff establishes that the defendant has acted with "malice, fraud, or oppression." "Malice" and "oppression," in turn, are defined as conduct that is despicable and is carried on with a "conscious disregard" for the rights of others, and that is either intended to cause harm (malice) or subjects another person to cruel and unjust hardship (oppression). To establish such "conscious disregard," a plaintiff must show that the defendant was aware of the probable dangerous consequences of his or her actions to plaintiff's interests, and willfully and deliberately failed to avoid those consequences. Scott v. Phoenix Schools, Inc., 175 Cal.App.4th 702, 716 (2009); Spinks v. Equity Residential Briarwood Apartments, 171 Cal.App.4th 1004, 1055 (2009).

Here, Defendants' conduct and unethical behavior was "despicable" and was "carried on. . .with a willful and conscious disregard" of the rights of Tribe, and the failure to disclose and concealment of that scheme from the Tribe represented the "concealment of a material fact known to the defendant" with the intention of depriving the Tribe of its legal rights. The fact that the Peebles Defendants were **fiduciaries** only exacerbated the concealment. Similarly, the Peebles Defendants' repeated violations of the Rules of Professional Conduct and breaches of fiduciary duty constituted conduct "so vile, base or contemptible that it would be looked down upon by reasonable people." The kickback

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scheme appears to rise to the level of criminal conduct[4] for which four of the co-conspirators have already been indicted.[5] A review of the Indictment (See, fn. 1, supra) reveals that the criminal charges against Kovall, Bardos, Shambaugh and David Heslop relate to the same pattern of conduct present here, i.e., the conspiracy amongst professional vendors of the Tribe, brought in by Attorney Kovall, to receive kickbacks in connection with breaches of their respective professional duties to Plaintiffs, and a scheme to defraud Plaintiffs.

VI. CONCLUSION

The evidence will show that the Peebles Defendants are liable to Plaintiffs for Legal Malpractice, Breach of Fiduciary Duty and Breach of Contract. With respect to the cause of action for breach of fiduciary duty, the evidence will support a finding by the jury of malice, oppression and fraud necessary to support an award of punitive damages in addition to compensatory damages.

Dated: May 29, 2012

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By: _____
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[4] See, California Penal Code § 641.3 [Commercial bribery]. (See Page 7 fn. 3 for full text.)

[5] See, Exhibit A, attached hereto.

EXHIBIT A

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

September 2011 Grand Jury

UNITED STATES OF AMERICA, Plaintiff, v. GARY EDWARD KOVALL, DAVID ALAN HESLOP, PAUL PHILLIP BARDOS, and PEGGY ANNE SHAMBAUGH, Defendants.	No. CR 12 00441 I N D I C T M E N T [18 U.S.C. § 371: Conspiracy; 18 U.S.C. § 666: Receipt of a Bribe by an Agent of an Indian Tribal Government Receiving Federal Funds, Paying a Bribe to an Agent of an Indian Tribal Government Receiving Federal Funds; 18 U.S.C. § 1957(a): Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity; 18 U.S.C. §§ 981(a)(1), 982(a)(1), 21 U.S.C. § 2461(c): Criminal Forfeiture]

The Grand Jury charges:

COUNT ONE

[18 U.S.C. § 371]

A. INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

1. The Twenty-Nine Palms Band of Mission Indians ("Tribe") was a Native American tribe. The Tribe's reservation

was located in the Mojave Desert. The Tribe is governed by a Tribal Council led by an elected Tribal Chairman.

2. The Tribe owned Twenty-Nine Palms Enterprises Corp. through which the Tribe operated the Spotlight 29 Casino in Riverside County, within the Central District of California.

3. Defendant GARY EDWARD KOVALL ("KOVALL") was a member of the State Bar of California who represented the Tribe as its legal counsel. Defendant KOVALL maintained an office on the Tribe's property and, according to defendant KOVALL's invoices to the Tribe, defendant KOVALL worked for the Tribe on virtually a daily basis. Among other things, defendant KOVALL attended Tribal Council meetings, negotiated and drafted contracts on behalf of the Tribe, and advised the Tribal Council to enter contracts, including contracts between the Tribe and defendant DAVID ALAN HESLOP ("HESLOP") and contracts between the Tribe and defendant PAUL PHILLIP BARDOS ("BARDOS"). On the advice of defendant KOVALL, moreover, the Tribe created Echo Trail Holdings, LLC, a California limited liability company of which the Tribe is the sole member, to purchase real estate on behalf of the Tribe. Defendant KOVALL drafted the Operating Agreement of Echo Trail Holdings, LLC, and advised the Tribe to enter into it.

4. Defendant HESLOP was introduced to the Tribe by defendant KOVALL. On defendant KOVALL's advice, the Tribe named defendant HESLOP the manager of Echo Trail Holdings, LLC. Pursuant to the Operating Agreement of Echo Trail Holdings, LLC, defendant HESLOP was authorized to manage the company's assets; borrow money (including borrowing money from the Tribe); grant

security interests in the company's assets; refinance debts owed to the company for borrowed money; compromise or release the company's claims or debts; employ persons or entities for the operation and management of the company's business; open bank accounts for the benefit of the company; sign contracts, conveyances, assignments, leases, and agreements affecting the company's business and assets; sign checks and other orders for payment of the company's funds; and sign promissory notes, mortgages, deeds of trust, security agreements, and similar documents. The Tribe paid defendant HESLOP to manage Echo Trail Holdings, LLC, and, on the advice of defendant KOVALL, also paid defendant HESLOP to provide the Tribe with demographic consulting, beginning no later than the mid-2000s.

5. Defendant BARDOS was a licensed general contractor and the sole owner and shareholder of Bardos Construction, Inc., Cadmus Construction Co., and Cadmus Construction, Inc. Defendants HESLOP and KOVALL introduced defendant BARDOS to the Tribe and persuaded the Tribe to contract with defendant BARDOS to act as the Tribe's "owner's representative" in connection with a number of construction improvements to the Spotlight 29 Casino and grounds. Defendant HESLOP explained to the Tribe that, as the Tribe's owner's representative, defendant BARDOS would "review and oversee work of construction contracted by the Tribe with others and protect them [the Tribe] from harm." Defendant KOVALL drafted defendant BARDOS' "owner's representative" agreement with the Tribe, pursuant to which defendant BARDOS was, among other things, to review design and construction proposals, negotiate contracts with contractors and suppliers, inspect

construction work, review invoices, "protect [the Tribe's] interests" with respect to change orders, and verify that all work was completed to the Tribe's satisfaction.

6. Defendant PEGGY ANNE SHAMBAUGH ("SHAMBAUGH") was, at various times relevant to this Indictment, defendant KOVALL's co-habitant, girlfriend, fiancee, or wife.

7. On an annual basis, the United States Environmental Protection Agency ("EPA") provided the Tribe hundreds of thousands of dollars in federal assistance. EPA grant monies were disbursed to the Tribe throughout the year.

B. OBJECTS OF THE CONSPIRACY

8. Beginning no later than in or about September 2006, and continuing through in or about August 2008, in Riverside, San Bernardino, and San Luis Obispo Counties, within the Central District of California, and elsewhere, defendants KOVALL, HESLOP, BARDOS, and SHAMBAUGH, together with others known and unknown to the Grand Jury, conspired and agreed with each other knowingly and intentionally to (i) corruptly accept and agree to accept things of value from a person, that is, monetary payments, intending to be influenced and rewarded in connection with a transaction and series of transactions of the Tribe involving $5,000 or more; and (ii) corruptly give, offer, and agree to give things of value, that is, monetary payments, to any person intending to influence and reward Gary Edward Kovall and David Alan Heslop in connection with a transaction and series of transactions of the Tribe involving $5,000 or more, in violation of Title 18, United States Code, Section 666(a)(1)(B) and (a)(2).

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C. MEANS BY WHICH THE OBJECTS OF THE CONSPIRACY WERE TO BE ACCOMPLISHED

9. The objects of the conspiracy were to be accomplished in substance as follows:

a. Defendants HESLOP and KOVALL would introduce defendant BARDOS to the Tribe and recommend that the Tribe hire defendant BARDOS as the Tribe's "owner's representative" in connection with construction work planned by the Tribe.

b. Defendant KOVALL would persuade the Tribe to enter into a contract with defendant BARDOS, whereby defendant BARDOS would act as the Tribe's "owner's representative" in connection with a number of construction improvements to the Spotlight 29 Casino and grounds.

c. When additional construction or construction oversight would become necessary, defendant BARDOS would submit proposals to perform the work, and defendant KOVALL would advise the Tribe to accept defendant BARDOS' proposals.

d. Defendant BARDOS would pay kickbacks to defendant HESLOP who, in turn, would pay kickbacks to defendant KOVALL, though defendant SHAMBAUGH.

D. OVERT ACTS

10. In furtherance of the conspiracy and to accomplish the objects of the conspiracy, defendants KOVALL, HESLOP, BARDOS, and SHAMBAUGH, and others known and unknown to the Grand Jury, committed various overt acts within the Central District of California and elsewhere, including but not limited to the following:

a. In or about September 2006, defendants HESLOP and

KOVALL introduced defendant BARDOS to the Tribe and recommended that the Tribe hire defendant BARDOS as the Tribe's "owner's representative" in connection with construction work planned by the Tribe.

b. On or about February 1, 2007, defendant KOVALL advised the Tribe to enter into a contract with defendant BARDOS, whereby defendant BARDOS would act as the Tribe's "owner's representative" in connection with a number of construction improvements to the Spotlight 29 Casino and grounds, including a "parking structure located adjacent to the Spotlight 29 casino," for which the Tribe initially paid defendant BARDOS $12,500.00 per month and later $12,500.00 twice per month.

c. On or about March 12, 2007, defendant BARDOS proposed that his company, Cadmus Construction Co., construct the temporary parking lot and access road for $751,995.00.

d. In or about March 2007, defendant KOVALL informed the Tribe that he had compared defendant BARDOS' $751,995.00 proposal to proposals obtained from other contractors, advised the Tribe that accepting defendant BARDOS' proposal would save the Tribe money, and persuaded the Tribe to contract with defendant BARDOS and Cadmus Construction Co. to construct the temporary parking lot and access road for $751,995.00.

e. On or about March 21, 2007, defendant BARDOS contracted with another construction company to construct the temporary parking lot and access road for $291,258.00.

f. On or about May 4 and May 9, 2007, defendant BARDOS provided defendant HESLOP with two checks, totaling $209,082.48, from $751,995.00 the Tribe paid defendant BARDOS to

construct the temporary parking lot and access road.

g. On or about May 10, 2007, defendant HESLOP provided defendant SHAMBAUGH a check in the amount of $80,000.00.

h. On or about May 7, 2007, after the Tribe was required to clear an 80-acre parcel of land as a fire abatement measure, defendant BARDOS proposed that his company, Cadmus Construction Co., perform the disking for $22,250.00.

i. On a date unknown, but between on or about May 7, 2007, and September 20, 2007, defendant KOVALL persuaded the Tribe to accept defendant BARDOS' proposal to clear the 80-acre parcel of land for $22,250.00.

j. On or about August 20, 2007, defendant BARDOS paid another construction company to clear the 80-acre parcel of land for $2,836.19.

k. On or about September 26, 2007, defendant BARDOS, after having been paid $22,250.00 by the Tribe, provided defendant HESLOP with a check in the amount of $11,125.00.

l. On or about October 18, 2007, defendant HESLOP provided defendant SHAMBAUGH a check in the amount of $7,813.00.

m. On or about May 22, 2007, defendant BARDOS proposed that his company, Cadmus Construction Co., perform the oversight of the construction at the Spotlight 29 Casino of a co-generation power plant for $620,000.00, with $120,000.00 "due upon signing" and monthly payments thereafter.

n. On or about June 12, 2007, defendant KOVALL advised the Tribe: (i) it would need an "owner's representative" for the co-generation plant construction project; (ii) defendant BARDOS' existing "owner's representative" contract did not

include this project; (iii) he had compared defendant BARDOS' proposal to the competing proposal; (iv) the Tribe would "save more than $100,000" by selecting defendant BARDOS; and (v) to accept defendant BARDOS' proposal.

o. On or about July 17, 2007, defendant BARDOS, after having been paid $120,000.00 by the Tribe as the "due upon signing" payment for oversight of the co-generation plant construction project, provided defendant HESLOP with a check in the amount of $60,000.00.

p. On or about July 20, 2007, defendant HESLOP provided defendant SHAMBAUGH a check in the amount of $30,000.00.

q. On or about August 22, 2007, defendant BARDOS, after having been paid $31,250.00 by the Tribe as a monthly payment for oversight of the co-generation plant construction project, provided defendant HESLOP with a check in the amount of $15,625.00.

r. On or about August 27, 2007, defendant HESLOP provided defendant SHAMBAUGH a check in the amount of $8,313.00.

s. On or about September 18, 2007, defendant BARDOS, after having been paid $31,250.00 by the Tribe as a monthly payment for oversight of the co-generation plant construction project, provided defendant HESLOP with a check in the amount of $15,625.00.

t. On or about October 4, 2007, defendant HESLOP provided defendant SHAMBAUGH a check in the amount of $13,375.00, including the notation "Partner Payment."

u. On or about October 9, 2007, defendant BARDOS, after having been paid $31,250.00 by the Tribe as a monthly

payment for oversight of the co-generation plant construction project, provided defendant HESLOP with a check in the amount of $15,625.00.

v. On or about October 18, 2007, defendant HESLOP provided defendant SHAMBAUGH a check in the amount of $24,541.00, including the notation "Replacement for May Check."

w. On or about November 9, 2007, defendant BARDOS, after having been paid $31,250.00 by the Tribe as a monthly payment for oversight of the co-generation plant construction project, provided defendant HESLOP with a check in the amount of $15,625.00.

x. On or about November 26, 2007, defendant HESLOP provided defendant SHAMBAUGH a check in the amount of $7,863.00, including the notation "Cadmus."

COUNTS TWO THROUGH NINE

[18 U.S.C. § 666(a)(2)]

11. The Grand Jury repeats and re-alleges paragraph 1 through 7 this Indictment as though fully set forth herein.

12. At all times material to this indictment, the Tribe was a tribal government that received federal assistance in excess of $10,000 during the one-year period beginning May 9, 2007, and ending May 8, 2008.

13. On or about the dates set forth below, in Riverside, San Bernardino, and San Luis Obispo Counties, within the Central District of California, and elsewhere, defendant BARDOS corruptly gave, offered, and agreed to give things of value, that is, the monetary payments set forth below, to any person intending to influence and reward Gary Edward Kovall and David Alan Heslop in connection with a transaction and series of transactions of the Tribe involving $5,000 or more.

COUNT	DATE	CHECK NO.	PAYEE	AMOUNT
TWO	May 9, 2007	None	Alan Heslop	$37,327.48
THREE	July 17, 2007	None	Alan Heslop	$60,000.00
FOUR	Aug. 23, 2007	1009	Alan Heslop	$15,625.00
FIVE	Sept. 18, 2007	1012	Alan Heslop	$15,625.00
SIX	Sept. 26, 2007	1014	Alan Heslop	$11,125.00
SEVEN	Oct. 9, 2007	1016	Alan Heslop	$15,625.00
EIGHT	Nov. 9, 2007	1019	Alan Heslop	$15,625.00
NINE	Dec. 3, 2007	1023	Alan Heslop	$15,625.00

COUNTS TEN THROUGH SEVENTEEN

[18 U.S.C. § 666(a)(1)(B)]

14. The Grand Jury repeats and re-alleges paragraphs 1 through 7 and 12 of this Indictment as though fully set forth herein.

15. On or about the dates set forth below, in Riverside and San Luis Obispo Counties, within the Central District of California, and elsewhere, defendant HESLOP, corruptly solicited and demanded and accepted and agreed to accept things of value from a person, that is, the monetary payments set forth below, intending to be influenced and rewarded in connection with a transaction and series of transactions of the Tribe involving $5,000 or more.

COUNT	DATE	CHECK NO.	PAYEE	AMOUNT
TEN	May 9, 2007	None	Alan Heslop	$37,327.48
ELEVEN	July 17, 2007	None	Alan Heslop	$60,000.00
TWELVE	Aug. 23, 2007	1009	Alan Heslop	$15,625.00
THIRTEEN	Sept. 18, 2007	1012	Alan Heslop	$15,625.00
FOURTEEN	Sept. 26, 2007	1014	Alan Heslop	$11,125.00
FIFTEEN	Oct. 9, 2007	1016	Alan Heslop	$15,625.00
SIXTEEN	Nov. 9, 2007	1019	Alan Heslop	$15,625.00
SEVENTEEN	Dec. 3, 2007	1023	Alan Heslop	$15,625.00

COUNTS EIGHTEEN THROUGH TWENTY-FOUR

[18 U.S.C. § 666(a)(2)]

16. The Grand Jury repeats and re-alleges paragraphs 1 through 7 and 12 of this Indictment as though fully set forth herein.

17. On or about the dates set forth below, in Riverside and San Luis Obispo Counties, within the Central District of California, and elsewhere, defendant HESLOP corruptly gave, offered, and agreed to give things of value, that is, the monetary payments set forth below, to any person intending to influence and reward Gary Edward Kovall in connection with a transaction and series of transactions of the Tribe involving $5,000 or more.

COUNT	DATE	CHECK NO.	PAYEE	AMOUNT
EIGHTEEN	May 10, 2007	4990	Peggy Shambaugh	$80,000.00
NINETEEN	July 20, 2007	5086	Peggy Shambaugh	$30,000.00
TWENTY	Aug. 27, 2007	5120	Peggy Shambaugh	$ 8,313.00
TWENTY-ONE	Oct. 4, 2007	4713	Peggy Shambaugh	$13,375.00
TWENTY-TWO	Oct. 18, 2007	4736	Peggy Shambaugh	$24,541.00
TWENTY-THREE	Oct. 18, 2007	4737	Peggy Shambaugh	$ 7,813.00
TWENTY-FOUR	Nov. 26, 2007	4792	Peggy Shambaugh	$ 7,863.00

COUNTS TWENTY-FIVE THROUGH THIRTY-ONE

[18 U.S.C. §§ 666(a)(1)(B), 2]

18. The Grand Jury repeats and re-alleges paragraphs 1 through 7 and 12 of this Indictment as though fully set forth herein.

19. On or about the dates set forth below, in Riverside County, within the Central District of California, and elsewhere, defendant KOVALL, corruptly solicited and demanded and, aided and abetted by defendant SHAMBAUGH, accepted and agreed to accept things of value from a person, that is, the monetary payments set forth below, intending to be influenced and rewarded in connection with a transaction and series of transactions of the Tribe involving $5,000 or more.

COUNT	DATE	CHECK NO.	PAYEE	AMOUNT
TWENTY-FIVE	May 10, 2007	4990	Peggy Shambaugh	$80,000.00
TWENTY-SIX	July 20, 2007	5086	Peggy Shambaugh	$30,000.00
TWENTY-SEVEN	Aug. 27, 2007	5120	Peggy Shambaugh	$ 8,313.00
TWENTY-EIGHT	Oct. 4, 2007	4713	Peggy Shambaugh	$13,375.00
TWENTY-NINE	Oct. 18, 2007	4736	Peggy Shambaugh	$24,541.00
THIRTY	Oct. 18, 2007	4737	Peggy Shambaugh	$ 7,813.00
THIRTY-ONE	Nov. 26, 2007	4792	Peggy Shambaugh	$ 7,863.00

COUNTS THIRTY-TWO THROUGH FORTY-EIGHT

[18 U.S.C. § 1957]

20. On or about the dates set forth below, in San Bernardino, Riverside, and San Luis Obispo Counties, within the Central District of California, and elsewhere, defendants PAUL PHILLIP BARDOS, DAVID ALAN HESLOP, and PEGGY ANNE SHAMBAUGH, knowing that the funds involved represented the proceeds of some form of unlawful activity, conducted and attempted to conduct, and willfully caused others to conduct, the following monetary transactions, by, through, or to a financial institution, affecting interstate or foreign commerce, in criminally derived property of a value greater than $10,000, that is, the deposit, withdrawal, transfer, and exchange of United States currency, which property, in fact, was derived from specified unlawful activity, that is, commercial bribery, in violation of California Penal Code section 641.3.

COUNT	DATE	DEFENDANT	MONETARY TRANSACTION
THIRTY-TWO	May 9, 2007	BARDOS	Deposit of check no. 1008, dated May 3, 2007, drawn against Pacific Western Bank account no. XXX-XXX0669 and payable to Cadmus Construction Co. in the amount of $196,440.00.
THIRTY-THREE	May 14, 2007	HESLOP	Deposit of unnumbered check, dated May 9, 2007, drawn against Inland Community Bank account no. XXX XX5634 and payable to Alan Heslop in the amount of $37,327.48.

THIRTY-FOUR	June 6, 2007	BARDOS	Deposit of check no. 1018, dated May 30, 2007, drawn against Pacific Western Bank account no. XXX-XXX0669 and payable to Cadmus Construction Co. in the amount of $38,450.00.
THIRTY-FIVE	July 18, 2007	SHAMBAUGH	Deposit of check no. 4990, dated May 10, 2007, drawn against Mid-State Bank & Trust account no. XXXXX4902, payable to Peggy Shambaugh in the amount of $80,000.00.
THIRTY-SIX	July 18, 2007	BARDOS	Deposit of check no. 1038, dated July 11, 2007, drawn against Pacific Western Bank account no. XXX-XXX0669 and payable to Cadmus Construction Co. in the amount of $120,000.00.
THIRTY-SEVEN	July 23, 2007	SHAMBAUGH	Deposit of check no. 5086, dated July 20, 2007, drawn against Mid-State Bank & Trust account no. XXXXX4902, payable to Peggy Shambaugh in the amount of $30,000.00.
THIRTY-EIGHT	July 23, 2007	HESLOP	Deposit of unnumbered check, dated July 17, 2007, drawn against Inland Community Bank account no. XXX XX5634 and payable to Alan Heslop in the amount of $60,000.00.
THIRTY-NINE	Aug. 22, 2007	BARDOS	Deposit of check no. 87537, dated August 15, 2007, drawn against Pacific Western Bank account no. XXXXX6197 and payable to Cadmus Construction Co. in the amount of $31,250.00.
FORTY	Aug. 27, 2007	HESLOP	Deposit of check no. 1009, dated August 23, 2007, drawn against Inland Community Bank account no. XXX XX5634 and payable to Alan Heslop in the amount of $15,625.00.

FORTY-ONE	Sept. 19, 2007	BARDOS	Deposit of check no. 1058, dated September 13, 2007, drawn against Pacific Western Bank account no. XXX-XXX0669 and payable to Cadmus Construction Co. in the amount of $31,250.00.
FORTY-TWO	Sept. 26, 2007	BARDOS	Deposit of check no. 1067, dated September 20, 2007, drawn against Pacific Western Bank account no. XXX-XXX0669 and payable to Cadmus Construction Co. in the amount of $22,250.00.
FORTY-THREE	Oct. 2, 2007	HESLOP	Deposit of check no. 1012, dated September 18, 2007, drawn against Inland Community Bank account no. XXX XX5634 and payable to Alan Heslop in the amount of $15,625.00.
FORTY-FOUR	Oct. 2, 2007	HESLOP	Deposit of check no. 1014, dated September 26, 2007, drawn against Inland Community Bank account no. XXX XX5634 and payable to Alan Heslop in the amount of $11,125.00.
FORTY-FIVE	Oct. 10, 2007	BARDOS	Deposit of check no. 1068, dated December 3, 2007, drawn against Pacific Western Bank account no. XXX-XXX0669 and payable to Cadmus Construction Co. in the amount of $31,250.00.
FORTY-SIX	Oct. 17, 2007	HESLOP	Deposit of check no. 1016, dated October 9, 2007, drawn against Inland Community Bank account no. XXX XX5634 and payable to Alan Heslop in the amount of $15,625.00.

FORTY-SEVEN	Nov. 13, 2007	BARDOS	Deposit of check no. 1079, dated November 5, 2007, drawn against Pacific Western Bank account no. XXX-XXX0669 and payable to Cadmus Construction Co. in the amount of $31,250.00.
FORTY-EIGHT	Nov. 19, 2007	HESLOP	Deposit of check no. 1019, dated November 9, 2007, drawn against Inland Community Bank account no. XXX XX5634 and payable to Alan Heslop in the amount of $15,625.00.

FORFEITURE ALLEGATION I

[18 U.S.C. § 981(a)(1); 28 U.S.C. § 2461(c); 21 U.S.C. § 853]

[Bribery]

1. The Grand Jury incorporates and realleges all of the allegations contained in the Introductory Allegations and Counts Two through Thirty-One above as though fully set forth in their entirety here for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 981(a)(1); Title 28, United States Code, Section 2461(c); and Title 21, United States Code, Section 853.

2. Defendants KOVALL, HESLOP, BARDOS, and SHAMBAUGH, if convicted of the offense charged in Count One of this Indictment, defendant BARDOS, if convicted of any of the offenses charged in Counts Two through Nine of this Indictment, defendant HESLOP, if convicted of any of the offenses charged in Counts Ten through Twenty-Four of this Indictment, and defendants KOVALL and SHAMBAUGH, if convicted of any of the offenses charged in Counts Twenty-Five through Thirty-One of this Indictment, shall forfeit to the United States the following property:

a. All right, title, and interest in any and all property, real or personal, which constitutes or is derived from proceeds traceable to such offenses;

b. A sum of money equal to the total amount of proceeds derived from each such offense for which defendants are convicted, or for which defendants may be held jointly and severally liable.

3. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section

2461(c), defendants KOVALL, HESLOP, BARDOS, and SHAMBAUGH, if so convicted, shall forfeit substitute property, up to the total value of the property described in paragraph 2 above, if, by any act or omission of the defendants, the property described in paragraph 2, or any portion thereof, (a) cannot be located upon the exercise of due diligence; (b) has been transferred or sold to, or deposited with, a third party; (c) has been placed beyond the jurisdiction of the court; (d) has been substantially diminished in value; or (e) has been commingled with other property that cannot be divided without difficulty.

FORFEITURE ALLEGATION II

[18 U.S.C. § 982(a)(1)]

[Money Laundering]

1. The Grand Jury incorporates and realleges all of the allegations contained in the Introductory Allegations and Counts Thirty-Two through Forty-Eight above as though fully set forth in their entirety here for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 982(a)(1).

2. Defendants HESLOP, BARDOS, and SHAMBAUGH, if convicted of any of the offenses charged under Counts Thirty-Two through Forty-Eight of this Indictment, shall forfeit to the United States the following property:

a. All right, title, and interest in any and all property involved in each offense committed in violation of Title 18, United States Code, Section 1957, or conspiracy to commit such offense, for which each defendant is convicted, and all property traceable to such property, including the following:

(1) all money or other property that was the subject of the transaction in violation of Title 18, United States Code, Section 1957;

(2) all commissions, fees, and other property constituting proceeds obtained as a result of that violation;

(3) all property used in any manner or part to commit or to facilitate the commission of that violation;

(4) all property traceable to money or property described in this paragraph 2.a.(1) through 2.a.(3).

b. A sum of money equal to the total amount of money

involved in each offense committed in violation of Title 18, United States Code, Section 1957, or conspiracy to commit such offense, for which the defendant is convicted.

3. Pursuant to Title 21, United States Code, Section 853(p), defendants HESLOP, BARDOS, and SHAMBAUGH, if so convicted, shall forfeit substitute property, up to the total value of the property described in paragraph 2 above, if, by any act or omission of the defendants, any of the foregoing money or property (a) cannot be located upon the exercise of due diligence; (b) has been transferred or sold to, or deposited with, a third party; (c) has been placed beyond the jurisdiction of the court; (d) has been substantially diminished in value; or (e) has been commingled with other property that cannot be subdivided without difficulty.

A TRUE BILL

Foreperson

ANDRÉ BIROTTE JR.
United States Attorney

ROBERT E. DUGDALE
Assistant United States Attorney
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LAWRENCE S. MIDDLETON
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PROOF OF SERVICE

Twenty-Nine Palms v. Edwards, Case No. 30-2009 00311045

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 11601 Wilshire Boulevard, Suite 2410, Los Angeles, CA 90025.

On May 29, 2012, I served the foregoing document described as:

PLAINTIFFS' TRIAL BRIEF

James J. Banks
Brian M. Englund
Banks & Watson
813 Sixth Street, Suite 400
Sacramento, CA 95814

☒ **(BY E-MAIL OR ELECTRONIC SERVICE)** I caused the document(s) listed above to be transmitted to the person(s) at the electronic notification address *via* OneLegal: benglund@bw-firm.com; jbanks@bw-firm.com . I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Sarah C. Choi

BANKS & WATSON
CASE NAME: ***Twenty-Nine Palms Band of Indians, et al. v. Edwards, et al.***
COURT: **Orange County Superior Court**
CASE NO: **30-2009-00311045**

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

At the time of service, I was over 18 years of age and not a party to this action. My business address is 813 Sixth Street, Suite 400, Sacramento, California 95814; my electronic address is dbrown@bw-firm.com.

On June 1, 2012, I served the within:

TRIAL BRIEF

on the person(s) below, as follows:

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(✓) **BY E-MAIL OR ELECTRONIC NOTIFICATION** – I caused the document(s) listed above to be transmitted *via* One Legal to the person(s) at the email address(es) set forth above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 1, 2012, at Sacramento, California.

Diane Brown