

A159823

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION TWO**

ROBERT FINDLETON,
Plaintiff and Respondent,

v.

COYOTE VALLEY BAND OF POMO INDIANS,
Defendant and Appellant.

APPEAL FROM THE SUPERIOR COURT FOR MENDOCINO COUNTY
No. SCUJ-CVG-12-59929
THE HONORABLE ANN C. MOORMAN

**MOTION TO AUGMENT RECORD ON APPEAL;
MEMORANDUM; DECLARATION OF DARIO
NAVARRO; EXHIBITS; PROPOSED ORDER**

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A159823

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA**

FIRST APPELLATE DISTRICT, DIVISION TWO

ROBERT FINDLETON,

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Defendant and Appellant.

APPEAL FROM THE SUPERIOR COURT FOR MENDOCINO COUNTY

No. SCUК-CVG-12-59929

THE HONORABLE ANN C. MOORMAN

MOTION TO AUGMENT RECORD ON APPEAL

Pursuant to California Rules of Court, rule 8.155(a) and First Appellate District Local Rule 4, Plaintiff-Respondent Robert Findleton (“Findleton”) moves this Court to augment the record on appeal to include **Plaintiff’s Status Conference Statement of November 2, 2019 (filed Nov. 4, 2019, Super. Ct. Mendocino County, No. SCUК-CVG-12-59929) [“Plaintiff’s Status Conference Statement”]**, a lower court filing that was not included in the Clerk’s Transcript, nor designated by Defendant-Appellant Coyote Valley Band of Pomo Indians (“Tribe”), nor counterdesignated by Findleton. A copy of Plaintiff’s Status Conference Statement is attached to this motion as **Exhibit 1**. (Cal. Rules of Court, rule 8.155, subd. (a) [“Rule 8.155(a)”]; Ct. App., First Dist., Local Rules of Ct., rule 4, Augmentation of the Record [“Local Rule 4”].)

In addition, pursuant to California Rules of Court, rule 8.155(c) and First Appellate District Local Rule 4(b), Findleton respectfully requests, in the interest of judicial economy, that this Court exercise its inherent authority to correct the record *sua sponte* “on its own motion” by ordering the addition of the following essential document that was erroneously omitted from the record by the superior court clerk although designated by both parties: **Reporter’s Transcript of Debtor’s Examination of Amanda Pulawa (April 26, 2019, at 3:05 p.m.) (taken at Mendocino County Courthouse, Ukiah, California, as reported by Anne Ramirez, CSR 6186), pp. 1-22 (hereto attached as Exhibit 2) [“Pulawa Transcript”] (10CCT¹ 2776-2797).** (Cal. Rules of Court, rule 8.155, subd. (c) [“Rule 8.155(c)”]; Ct. App., First Dist., Local Rules of Ct., rule 4, subd. (b).)

The Pulawa Transcript was both **(1)** counterdesignated by Findleton in his Respondent’s Notice Designating Record on Appeal of April 10, 2019 (filed April 13, 2019) [“Findleton’s Counterdesignation”] (2CT 380, at item no. 2-a(1)(f)), and **(2)** thereafter designated again by the Tribe in its Corrected Appellant’s Notice Designating Record on Appeal of April 20, 2019 (filed April 21, 2019) [“Tribe’s Corrected Designation”] (2CT 419).

Although both the Tribe and Findleton designated and counter-designated the Pulawa Transcript in the present appeal (No. A159823), the superior court clerk failed to include it in the Reporter’s Transcript on Appeal of the present appeal. A copy of the document to be added to Reporter’s Transcript on Appeal to cure this omission and correct the record in Appeal No. A159823 is attached to this motion as **Exhibit 2**.

1. The consolidated clerk’s transcript for Appeal Nos. A158171, A158172, and A158173 is herein cited as “CCT.”

The Court is respectfully advised that, concurrently with the filing of this motion, Findleton serves this Court with a copy of the “notice in superior court specifying the omitted portion [of the record] and requesting that it be prepared, certified, and sent to the reviewing court” as required by California Rules of Court, rule 8.155(b)(1). (Cal. Rules of Court, rule 8.155, subd. (b)(1).)

This motion is based on the accompanying Memorandum of Points and Authorities and Declaration of Dario Navarro in Support of Motion to Augment Record on Appeal.

Dated: **March 29, 2021**

Respectfully submitted,

LAW OFFICE OF DARIO NAVARRO

A handwritten signature in black ink that reads "Dario Navarro". The signature is written in a cursive, flowing style.

Dario Navarro

Attorney for Plaintiff and Respondent

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

Facts Relating to the Motion to Augment Record on Appeal

In Appellant’s Opening Brief (AOB 57-58, 60), the Tribe,² repeating an already disproven malicious allegation from the Tribe’s December 2, 2019 opposition papers (1CT 171:4-14) to Findleton’s November 14, 2019 Motion to Compel Production of Documents,³ again falsely accused “Respondent’s counsel” (AOB 57:21-22) of somehow having attempted to conceal from the lower court the fact, *then already a matter of record* (1CT 196:22-28 – 197:1-13), that Findleton had served the First Production Requests⁴ on August 13, 2019 (“First Production Request”) before Findleton served the Amended Production Requests⁵ on August 28, 2019. (AOB 57-58, 60.)

The Tribe mistakenly contended below (1CT 171:4-14) and in the AOB (AOB 57-58, 60) that the August 13, 2019 service was time-barred because it occurred within 120 days of the then most recently *obstructed and aborted attempt* to hold a debtor’s examination on April 26, 2019.⁶ (10CCT 2776-2796.) In those obstructed proceedings, the Tribe deliberately proffered an

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2. Defendant-Respondent Coyote Valley Band of Pomo Indians (“Tribe”).
 3. Notice of Motion and Motion to Compel Responses to Plaintiff’s Amended First Set of Requests for Production of Documents (Nov. 14, 2019) [“Motion to Compel Production of Documents”] (1CT 61-169).
 4. Plaintiff’s First Set of Judgment Debtor Requests for Production to Defendant (served Aug. 13, 2019). (1CT 177-186.)
 5. Plaintiff’s Amended First Set of Requests for the Production of Documents to Defendant [“Amended Production Requests”]. (1CT 90-99.)
 6. Code Civ. Proc., §§ 708.030, subd. (b) [prohibiting the service of inspection demand “within 120 days after the judgment debtor has been examined”]. Findleton has consistently contended that no legally cognizable examination occurred on April 26, 2019 due to the Tribe’s overt obstruction of the proceedings. (1CT 198, fn. 1, lines 24-28.)

incompetent witness, Ms. Amanda Pulawa, the newly elected Treasurer of the Tribe, who (1) initially refused to answer any questions after asserting a testimonial privileged unrecognized by California law⁷ based on a putative tribal court order upon instructions of defense counsel, and, later, after being instructed by the Court to answer the questions put to her,⁸ (2) openly admitted (10CCT 2789:3-9), that she was totally unfamiliar with the Tribe’s casino assets, thereby placing the Tribe in violation of Section 708.150(a) by producing a witness who was unable to provide any answers of substance to any questions relating to the Tribe’s “property and debts.”⁹ Ms. Pulawa provided absolutely no useful information about the “casino assets.” (10CCT

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7. California courts recognize **only statute-based testimonial privileges**. California has no common law evidentiary privileges. (*Welfare Rights Organization v. Crisan* (1983) 33 Cal.3d 766, 768-769.) California courts have no power to “create” a testimonial privilege. (*HLC Properties, Ltd. v. Superior Court* (2005) 35 Cal.4th 54, 59-60; *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373.) A testimonial privilege based on tribal law or tribal court order is not found in the California Evidence Code. (Evid. Code, §§ 930-1070.)
 8. The Court expressly overruled the objections of the Tribe’s defense counsel to Plaintiff’s questioning and instructed the witness to answer: “[W]e are in a [s]ituation where the principles of comity have long determined that this court has the ability to go forward. I recognize that you’ve gotten other orders, you know, from a tribal court. I’m going to overrule your objection and order that she [i.e., Amanda Pulawa] answer the questions related to the assets of the tribe or any casino assets that are or were in the possession of the tribe or transferred to one of those other entities.” (10 CCT 2782:5-14.)
 9. 10CCT 2776-2796 [transcript of the obstructed April 26, 2019 debtor’s examination of Amanda Pulawa; 5CCT 409:20-25 – 410:1-19; 411:23-25 – 412:1-4; 414:1-3; 434:10-15 [discussing in oral argument the Tribe’s repeated proffering of incompetent witnesses at debtor’s examinations and continuing obstruction of debtor’s examination proceedings]; 708.150, subd. (a) [requiring the Tribe, after service with “an order to appear for an examination,” to “designate to appear and be examined one or more officers, directors, managing agents, or other persons who are familiar with its property and debts”].)

2776-2796.) The following exchange was typical of this obstructed debtor's examination:

[PLAINTIFF'S COUNSEL:] You handle funds coming through CEDCO; is that correct?

[AMANDA PULAWA:] No.

[PLAINTIFF'S COUNSEL:] Do you handle funds coming from the Federal Government to the tribe?

[AMANDA PULAWA:] No.

[PLAINTIFF'S COUNSEL:] All right. What do you do exactly then?

[AMANDA PULAWA:] I don't know.

[PLAINTIFF'S COUNSEL:] You don't know what you do exactly?

[AMANDA PULAWA:] Uh-uh.

MS. BOLAND: Can she say that she was just elected? [Defense counsel improperly prompted the witness.]

[AMANDA PULAWA:] I was just elected.

(10 CCT 2788:22-25 – 2789:1-9.) Out of an abundance of caution, Plaintiff served the Amended Production Requests on August 28, 2019, **124 days** after the attempt to hold a debtor's examination on April 26, 2019, thereby conclusively eliminating the issue of whether the August 13, 2019 service was in any way untimely. (1CT 85:7-8.)

As Findleton made abundantly clear in his December 6, 2019 reply (1CT 196:22-28 – 197:1-13) to the Tribe's December 2, 2019 opposition papers (1CT 170-191), Findleton had formally reported the August 13, 2019 service of the First Production Requests to the superior court and formally served prior written notice on the Tribe in advance of such communication¹⁰ in his Status Conference Statement of November 2, 2019, *fully 12 days*

10. See attached Exhibit 1, Proof of Service of 11/2/19 Plaintiff's Status Conference Statement, pp. 12-13.

before the filing of the Motion to Compel Production of Documents on November 14, 2019. (1CT 61-169.) Thus, Findleton and his counsel had completely disclosed to the lower court *on the record* the existence and service of the First Production Requests in Plaintiff’s Status Conference Statement of November 2, 2019. (Plaintiff’s Status Conference Statement (served Nov. 2, 2019 and filed Nov. 4, 2019) p. 8, § 4, ¶ (4), lines 10-11 [listing the First Production Requests, including the Aug. 13, 2019 service date, under a boldface section heading entitled, “**Status of Plaintiff’s Document Production Requests**”].) Findleton listed Plaintiff’s First Set of Document Requests, served August 13, 2019, in Plaintiff’s Status Conference Statement in numbered paragraph (4) of that document as follows:

- (4) Plaintiff’s First Set of Judgment Debtor Requests for Production to Defendant (served Aug. 13, 2019 pursuant to Code Civ. Proc. §§ 708.030 & 2031.210);

(*Id.*) When the Tribe’s defense counsel Glenn W. Peterson first falsely accused Findleton’s counsel of attempting to “conceal the issue [of the August 13, 2019 service of the First Production Requests] from the [lower] Court” in his December 2, 2019 opposition papers (1CT 171:4-14), defense counsel *knew or should have known* such accusation was *totally false* because the August 13, 2019 service of the First Production Requests was already known to the lower court as of November 2, 2019 upon the personal submission to the lower court of Plaintiff’s Status Conference Statement of November 2, 2019 by Findleton’s counsel and was, as of December 2, 2019, *a matter of record* with the lower court. (1CT 196:22-28 – 197:1-13.) The Tribe’s defense counsel has compounded their malicious and utterly baseless accusation against Findleton’s counsel by repeating this already disproven falsehood in the AOB. (AOB 57-58, 60.)

Findleton seeks to augment the record with the addition of Plaintiff's Status Conference Statement (served Nov. 2, 2019 and filed Nov. 4, 2019), pp. 1-13, attached hereto as **Exhibit 1**, not only to disprove the false allegation in the AOB (AOB 57-58, 60), but also to help establish that the Tribe and its defense counsel have engaged in a reprehensible pattern of litigation misconduct intended to obstruct and impede Findleton's enforcement of the arbitration agreement in overt violation of the April 24, 2017 Order to Compel Arbitration¹¹ and the decisions of this reviewing Court¹² in support of Findleton's forthcoming motion for sanctions and motion to dismiss based on disentitlement doctrine and the Tribe's fraud on the court.

Facts Relating to Request for Court to Correct RT on Its Own Motion

On April 13, 2019, Findleton timely filed in the present appeal (No. A159823) his Respondent's Notice Designating Record on Appeal, signed April 13, 2019, ["Findleton's Counterdesignation"], which expressly included the Reporter's Transcript of Debtor's Examination of Amanda Pulawa (April 26, 2019, at 3:05 p.m.) (taken at Mendocino County Courthouse, Ukiah, California, as reported by Anne Ramirez, CSR 6186) ["Pulawa Transcript"] for inclusion in the Reporter's Transcript on Appeal. (2CT 380, at item no. 2-a(1)(f).)

On April 21, 2021, the Tribe filed in the present appeal (No. A159823) its Corrected Appellant's Notice Designating Record on Appeal (signed

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11. Order on Hearing after Motion to Compel Mediation and Arbitration (signed Apr. 24, 2017; filed Apr. 25, 2017) ["Order to Compel Arbitration"] (4CCT 1137-1139).
 12. *Findleton v. Coyote Valley Band of Pomo Indians* (2016) 1 Cal.App.5th 1194, 1217, 1218 ["*Findleton I*"]; *Findleton v. Coyote Valley Band of Pomo Indians* (2018) 27 Cal.App.5th 565, 567, 571-572 ["*Findleton II*"].

April 20, 2019) [“Tribe’s Corrected Designation”] (2CT 419), which also expressly included the Pulawa Transcript.¹³

The Mendocino Superior Court Clerk failed to include the Pulawa Transcript in the officially certified Report’s Transcript on Appeal in the present appeal (No A159823). A copy of the Pulawa Transcript *does appear* in the Clerk’s Transcript in the record of the three consolidated appeals (Nos. A158171, A158172, and A158173) as Exhibit 6 to Plaintiff’s Motion Objecting to Defendant’s Election to Use Appendix on Appeal (10 CCT 2735-2797, at 2775-2797 [Exhibit 6]), but without the formal certification of the Mendocino Superior Court Clerk that would have been given to the document if it had been formally included in the Reporter’s Transcript on Appeal in this appeal (No. A159823). As required by Rule 8.155(b)(1), Findleton serves, concurrently with the filing of this motion, a copy of the “notice in superior court specifying the omitted portion [of the record] and requesting that it be prepared, certified, and sent to the reviewing court.” (Cal. Rules of Court, rule 8.155, subd. (b)(1).)

The inclusion of the Pulawa Transcript, erroneously omitted by the superior court clerk from the Reporter’s Transcript on Appeal, is essential to the full and fair appellate review of Findleton’s arguments not only in his Respondent’s Brief, now due April 14, 2021, but also to those in support of **(1)** his forthcoming motion to dismiss under the disentitlement document for the overt obstruction of the debtor’s examination that the Pulawa Transcript clearly evidences and **(2)** his planned motion for sanctions.

13. The Tribe references the Pulawa Transcript in Attachment 5b of its Corrected Designation as Part 2 of a “Motion Hearing” that was held earlier in the day of April 26, 2019, although the debtor’s examination of Amanda Pulawa was actually a separate judicial proceeding that was held later that afternoon on April 26, 2019 at 3:05 p.m. (2CT 419.)

The Pulawa Transcript is attached to this motion as **Exhibit 2**. In the interest of judicial economy, Findleton respectfully requests that the appellate court exercise its inherent authority *sua sponte* “on its own motion,” as expressly authorized by Rule 8.155(c), to correct the omission to the record as twice counterdesignated by Findleton to include the Pulawa Transcript in the Reporter’s Transcript on Appeal in the record to this Appeal No. A159823. (Cal. Rules of Court, rule 8.155, subd. (c).)

ARGUMENT

I. THIS COURT SHOULD ORDER AUGMENTATION OF THE RECORD BY ADDING PLAINTIFF’S STATUS CONFERENCE STATEMENT TO GIVE RESPONDENT FINDLETON FULL AND FAIR APPELLATE REVIEW IN THE INTEREST OF JUSTICE.

California Rules of Court, rule 8.155(a), provides in pertinent part that, on motion of a party, the appellate court may order the record augmented to include any document filed in the case in superior court. (Cal. Rules of Court, rule 8.155, subd. (a); Ct. App., First Dist., Local Rules of Ct., rule 4, subds. (a) & (d); *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.) First Appellate District Local Rule 4(c) further provides: “Respondent should file any such request in one motion made within 30 days of the filing of appellant’s opening brief. Thereafter, motions to augment will be considered only upon a showing of good cause.” (Ct. App., First Dist., Local Rules of Ct., rule 4, subd. (c).)

Given the timing of this Motion to Augment the Record on Appeal within the 30 days following the March 15, 2021 filing of the AOB, Respondent Findleton is relieved of any strict requirement to show “good cause” under Local Rule 4(c), yet good cause nonetheless exists. (Ct. App., First Dist., Local Rules of Ct., rule 4, subd. (c).) Appellant Tribe has

persisted in its AOB (AOB 57-58, 60) in repeating a disproven malicious accusation that “Respondent’s counsel” deliberately tried to conceal the service of the August 13, 2019 First Production Requests from the lower court, although that specious accusation was conclusively proven false in the proceedings below. (1CT 196:22-28 – 197:1-13)

Findleton seeks to augment the record in the interest of justice with the one document that dispositively establishes that the Tribe and its counsel *knew or should have known* both that such a reckless accusation was false when it was first made and certainly when it was inexcusably repeated on appeal: Plaintiff’s Status Conference Statement of November 2, 2019 (served Nov. 2, 2019 and filed Nov. 4, 2019) esp. at p. 8, § 4, ¶ (4), lines 10-11, as hereto attached as **Exhibit 1**.

Plaintiff seeks to augment the record with this document not only to expose the falsity of the Tribe’s reckless attempt to impugn the character and integrity of Findleton’s counsel, but to serve the much larger purpose of helping to establish a pattern of litigation misconduct on the part of the Tribe and its attorneys that relies improperly on deceit, threats and overt fraud on the court to subvert the judicial process in an effort to evade the legitimate enforcement of the arbitration agreement in this case and the Order to Compel Arbitration of April 24, 2017. The precipitating need for record augmentation is the irresponsible renewal of the Tribe’s false accusation against Findleton’s counsel, as further described in the accompanying Declaration of Dario Navarro (Mar. 28, 2021), at pp. 1-2, ¶¶ 1-8, which is hereby made an integral part of this motion.

Therefore, Findleton respectfully seeks the augmentation of the record by the addition of the Plaintiff’s Status Conference Statement of November 2, 2019 (served Nov. 2, 2019 and filed Nov. 4, 2019), hereto attached as

Exhibit 1, in the interest of justice. (*Russi v. Bank of America* (1945) 69 Cal.App.2d 100, 102 [holding appellate court has inherent discretion to grant record augmentation].)

II. THIS COURT SHOULD, ON ITS OWN MOTION, ORDER CORRECTION OF THE RECORD BY ADDING THE PULAWA TRANSCRIPT TO THE RECORD ON APPEAL TO GIVE RESPONDENT FINDLETON FULL AND FAIR APPELLATE REVIEW IN THE INTEREST OF JUSTICE.

This reviewing court possesses the inherent authority at any time “on its own motion” to correct or augment the record of the superior court oral proceedings or superior court documents. Rules 8.155(c)(1) expressly provides that “on its own motion, the reviewing court may order the correction or certification of any part of the record.” (Cal. Rules of Court, rule 8.155, subd. (c)(1) & 8.140, subd. (b)(1); Ct. App., First Dist., Local Rules of Ct., rule 4, subd. (b).); *McLaughlin v. Walnut Properties, Inc.* (2004) 119 Cal.App.4th 293, 299, fn. 6 [record augmented *sua sponte* to include missing documents on summary adjudication appeal]; *In re Christopher I.* (2003) 106 Cal.App.4th 533, 562-563 [record augmented *sua sponte* “in the interests of justice” to add documents]; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2018) § 5:129, p. 5-45 – 5-46 [*“Eisenberg”*].)

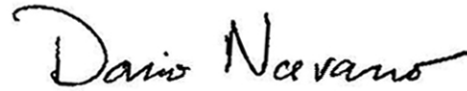
Since an officially certified copy of the Pulawa Transcript in the Reporter’s Transcript on Appeal is essential, as an evidentiary matter, to conclusive use of the facts revealed by that transcript, Findleton respectfully requests that this Court correct the record in this appeal by adding the erroneously omitted Pulawa Transcript on its own motion in the interest of justice. (*Id.*)

[MEMORANDUM OF POINTS AND AUTHORITIES CONTINUED:]

Date: March 29, 2021

Respectfully submitted,

LAW OFFICE OF DARIO NAVARRO

A handwritten signature in black ink that reads "Dario Navarro". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

Dario Navarro

Attorney for Plaintiff and Respondent

**DECLARATION OF DARIO NAVARRO, ESQ. IN SUPPORT
OF MOTION TO AUGMENT RECORD ON APPEAL**

I, Dario Navarro, declare:

1. I am an attorney at law duly admitted to practice before all the courts of the State of California and the attorney of record herein for Plaintiff-Respondent Robert Findleton (“Findleton”). I hold an LL.M. from the Yale Law School in New Haven, Connecticut, a J.D. from the Northwestern University School of Law in Chicago, Illinois, an M.P.A. from Princeton University in Princeton, New Jersey, and a B.A. from Marquette University in Milwaukee, Wisconsin.

2. The facts stated in this declaration are true of my own personal knowledge. If called as a witness in this matter, I could and would competently testify to the matters set forth below.

Augmentation by Addition of Plaintiff’s Status Conference Statement

3. By this motion, Findleton seeks an order from this Court to augment the record on appeal by adding the following document: Plaintiff’s Status Conference Statement of November 2, 2019 (served Nov. 2, 2019 and filed Nov. 4, 2019), pp. 1-13, in *Findleton v. Coyote Valley Band of Pomo Indians*, No. SCUk-CVG-12-59929 (Super. Ct. Mendocino County, originally filed Mar. 23, 2012), hereto attached as **Exhibit 1** [“Plaintiff’s Status Conference Statement”].

4. Good cause exists for seeking to augment the record with Plaintiff’s Status Conference Statement because such augmentation is necessary to conclusively disprove the false accusation that was recklessly and unexpectedly renewed by the Defendant-Appellant Coyote Valley Band of Pomo Indians (“Tribe”) and its defense counsel in the AOB (AOB 57-58,

60) that Findleton’s counsel sought to conceal the August 13, 2019 service of the First Production Requests from the superior court.

5. Further good cause exists for augmenting the record with Plaintiff’s Status Conference Statement because such augmentation would bring before the reviewing Court conclusive documentary evidence of a typical example of how the Tribe and its defense counsel repeatedly employ falsehoods, deceit, obstruction, and even overt fraud on the court to subvert the judicial process in order to evade enforcement of the arbitration agreement and the Order to Compel Arbitration of April 24, 2017. This example will crucially supplement many others Findleton will soon present in his forthcoming motion to dismiss under the disentitlement doctrine and motion for sanctions.

6. Pursuant to First Appellate District Local Rule 4(d), I hereby state and affirm that Plaintiff’s Status Conference Statement, which is the subject of this motion, was filed in the superior court in this case. (Ct. App., First Dist., Local Rules of Ct., rule 4, subd. (d).)

7. A true and correct copy of Plaintiff’s Status Conference Statement is attached to this motion as **Exhibit 1**.

8. Respondent Robert Findleton respectfully requests, in the interest of justice, the Court to allow the record to be augmented by adding Plaintiff’s Status Conference Statement as identified above.

Request for Addition of Pulawa Transcript on Court’s Own Motion

9. Pursuant to California Rules of Court, rule 8.155(b)(1), Findleton has filed the required “notice in superior court specifying the omitted portion [of the record] and requesting that it be prepared, certified, and sent to the reviewing court” and served concurrently with this motion “a copy of the

notice on the reviewing court.” (Cal. Rules of Court, rule 8.155, subd. (b)(1).)

10. The Pulawa Transcript contains *crucial evidence* of the overt, contemptuous obstruction by the Tribe and its defense counsel at the April 26, 2019 debtor’s examination of the proffered witness, Ms. Amanda Pulawa, that is essential to **(1)** refute conclusively in Findleton’s Respondent’s Brief, now due on April 14, 2021, the many misleading misrepresentations in and material omissions from the Tribe’s grossly biased Statement of Facts and Statement of the Case in its AOB, especially with respect to Ms. Pulawa’s testimony (AOB 16, 57, 58, 60, and **(2)** to establish by clear and convincing evidence that the Tribe and its defense counsel engaged in litigation misconduct that warrant the application of the disentitlement doctrine and remedies for their fraud on the court in Findleton’s forthcoming motion to dismiss and motion for sanctions.

11. Although the Pulawa Transcript *does appear* in the Clerk’s Transcript of the consolidated appeals (Nos. A158171, A158172, and A158173) as Exhibit 6 to Plaintiff’s Motion Objecting to Defendant’s Election to Use Appendix on Appeal (10 CCT 2735-2797, at 2775-2797 [Exhibit 6]), it does not appear, through no fault of Findleton, as an officially certified document in the Reporter’s Transcript on Appeal in either the aforementioned consolidated appeals or this appeal (No. A159823) or anywhere in the record for the concurrently pending Appeal No. A156459.

12. On April 13, 2019, Findleton timely filed in the present appeal (No. A159823) his Respondent’s Notice Designating Record on Appeal, signed April 13, 2019, [“Findleton’s Counterdesignation”], which expressly included the Pulawa Transcript for inclusion in the Reporter’s Transcript on Appeal. (2CT 380, at item no. 2-a(1)(f).)

13. On April 21, 2021, the Tribe filed in the present appeal (No. A159823) its Corrected Appellant’s Notice Designating Record on Appeal (signed April 20, 2019) [“Tribe’s Corrected Designation”] (2CT 419), which also expressly included the Pulawa Transcript.

14. The Mendocino Superior Court Clerk failed to include the Pulawa Transcript in the officially certified Report’s Transcript on Appeal in the record of present appeal (No A159823).

15. A copy of the Pulawa Transcript *does appear* in the Clerk’s Transcript in the record of the three consolidated appeals (Nos. A158171, A158172, and A158173) as Exhibit 6 to Plaintiff’s Motion Objecting to Defendant’s Election to Use Appendix on Appeal (10 CCT 2735-2797, at 2775-2797 [Exhibit 6]), but without the formal certification of the Mendocino Superior Court Clerk that would had been given to the document if it had been formally included in the Reporter’s Transcript on Appeal in this appeal (No. A159823).

16. As required by Rule 8.155(b)(1), Findleton serves, concurrently with the filing of this motion, a copy of the “notice in superior court specifying the omitted portion [of the record] and requesting that it be prepared, certified, and sent to the reviewing court.” (Cal. Rules of Court, rule 8.155, subd. (b)(1).)

17. The inclusion of the Pulawa Transcript, erroneously omitted by the superior court clerk from the Reporter’s Transcript on Appeal, is essential to the full and fair appellate review of Findleton’s arguments not only in his Respondent’s Brief, now due April 14, 2021, but also to those in support of **(1)** his forthcoming motion to dismiss under the disentitlement document for the overt obstruction of the debtor’s examination that the Pulawa Transcript clearly evidences and **(2)** his planned motion for sanctions.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 29th day of March 2021 in South Lake Tahoe, California.

A handwritten signature in black ink that reads "Dario Navarro". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Dario Navarro

Exhibit 1

Plaintiff's Status Conference Statement
(served Nov. 2, 2019 and filed Nov. 4, 2019), pp. 1-13,
in *Findleton v. Coyote Valley Band of Pomo Indians*, No.
SCUK-CVG-12-59929 (Super. Ct. Mendocino County)

EXHIBIT 1

By Fax

1 DARIO NAVARRO (SBN 102575)
2 Law Office of Dario Navarro
3 3655 Memory Lane
4 South Lake Tahoe, CA 96150-4137
5 Telephone: (619) 751-7189
6 Facsimile: (619) 374-7147
7 Email: navdar@gmail.com

FILED

NOV -4 2019

CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA



8 Attorneys for Plaintiff ROBERT FINDLETON

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF MENDOCINO

11 ROBERT FINDLETON, doing business as
12 Terre Construction and also doing business
13 as On-Site Equipment,

CASE NO. SCUK CVG 12-59929

PLAINTIFF'S STATUS CONFERENCE
STATEMENT

14 Plaintiff,

15 v.

16 COYOTE VALLEY BAND OF POMO
17 INDIANS, also known as the Shodakai
18 Casino, DOES 1-50,

Judge: Hon. John A. Behnke
Date: November 4, 2019
Time: 10:30 A.M.
Dept: H

19 Defendants.

20 1. **Date Status Conference Ordered from Bench:** Friday, October 25, 2019

21 2. **Date, Time and Department for Status Conference Hearing:**

22 (1) **Original Calendaring:** Friday, November 1, 2019, at 10:30 A.M. in
23 Department H of the Mendocino Superior Court.

(2) **Recalendared on October 31, 2019:** Monday, November 4, 2019, at 10:30
A.M. in Department H of the Mendocino Superior Court.

24 3. **Issues to Be Addressed:** At this status conference, Plaintiff respectfully seeks the
25 Court's assistance in resolving the following issues:

26 (1) **Total Amount of Money Judgments Collectible.** Clarification of amount subject
27 to collection as of November 15, 2019 arising from Plaintiff's prevailing party status
28 with respect to four court orders: **\$238,700.37;**

EXHIBIT 1

1 **(2) Scope of Examination.** As the Court of Appeal has emphasized, “the purpose of a
2 judgment debtor examination is to leave no stone unturned in the search for assets
3 which might be used to satisfy the judgment.” (*Troy v. Superior Court* (1986) 186
4 Cal.App.3d 1006, 1014.) As the judgment creditor, Plaintiff should be accorded “the
5 widest scope for inquiry concerning property and business affairs of the debtor” with
6 “the object of the [debtor’s examination] proceedings being to compel the judgment
7 debtor to give information concerning his property.” (*Young v. Keele* (1987) 188
8 Cal.App.3d 1090, 1093; *Yolanda’s, Inc. v. Kahl & Goveia Comm Real Estate* (2017)
9 11 Cal.App.5th 509, 511, 514.);

10 **(3) Enforcement of Outstanding Orders to Appear.** Enforcement of the four (4)
11 outstanding orders to appear for examination issued and served on the following
12 natural persons by a registered process server pursuant sections 708.110, 708.120,
13 708.130 & 708.150(b) of the Code of Civil Procedure (“CCP”) (Civ. Proc. Code §§
14 708.110, 708.120, 708.130(a) & 708.150, subd. (b).):

- 15 **(a)** Ruth Alcantra;
- 16 **(b)** Michael Hunter;
- 17 **(c)** Margaret Olea; and
- 18 **(d)** Amanda Pulawa.

19 Although Kelli Galindo Jaynes, a third party, was (i) served with a file-endorsed,
20 signed court order to appear for examination on **October 4, 2019**, contrary to her
21 false and misleading declaration of October 17, 2019 (“Jaynes Declaration”) and the
22 attached false and misleading “Exhibit A” to the Jaynes Declaration (which
23 deceptively lacks the file-endorsement and judge’s signature stamp), and (ii) Plaintiff
24 served defense counsel with advance notice of Plaintiff’s application for Jaynes’
25 order to appear on September 9, 2019, Plaintiff concedes, after careful review of all
26 pertinent records, that the service on Jaynes was defective but only because
27 Defendant Coyote Band of Pomo Indians (“Defendant” or “Defendant Band”), the
28 judgment debtor, was not served with the final signed “copy of the order” not less

EXHIBIT 1

1 than “10 days prior to the date set for the examination” as required by CCP section
2 708.120(b)(2). (Civ. Proc. Code § 708.120, subd. (b)(2).) *Plaintiff concedes no*
3 *other defect in service. California Evidence Code § 647 raises a rebuttable*
4 *presumption that the facts stated in a proof of service or “return” signed by a*
5 *registered process server are correct, a presumption which the four individuals*
6 *served failed to rebut. (Evid. Code, § 647; Palm Property Investments, LLC v.*
7 *Yadegar (2011) 194 Cal.App.4th 1419, 1428.)*

8 **(4) Consequences of False Declarations from Four Tribal Examinees.** Defendant
9 has filed four false declarations from Michael Hunter, Amanda Pulawa, Margaret
10 Olea and Kelli Jaynes incorrectly alleging, variously, (i) the wrong service date
11 (except for Margaret Olea), (ii) service by a man, when service was by a female
12 registered process server in two instances, and (iii) the false claim that unsigned
13 orders were served in addition to (iv) the false averment in each and every proof of
14 service that each declaration was served by electronic service consistent with CCP
15 section 1010.6, although service was in violation of CCP section 1010.6 because
16 Plaintiff withdrew consent to electronic service with notice effective September 20,
17 2019 after Defendant failed to file a reciprocal consent to electronic service pursuant
18 to CCP section 1010.6(a)(4) and Rules of Court, rule 2.251(b)(1)(C)(ii) by serving
19 and filing Form EFS-005-CV. (Civ. Proc. Code § 1010.6(a)(4); Cal. Rules of Court,
20 rule 2.251(b)(1)(C)(ii); Plaintiff’s Withdrawal of Consent to Electronic Service,
21 signed September 17, 2019, filed September 18, 2019 and effective September 20,
22 2019.)

23 **(5) Penalties for Failure to Appear.** The penalties to be imposed on the three (3) of the
24 five (5) natural persons named above in paragraph **3(b) through (d), inclusive,**
25 subject to the orders to appear duly issued and served pursuant to CCP sections
26 708.110(e), 708.130 & 708.150(b), especially the individual who was incontestably
27 subject to previous court orders to appear as the natural person designated by the
28 Defendant to appear on its behalf as an organizational entity: **Amanda Pulawa.**

EXHIBIT 1

(Civ. Proc. Code §§ 708.110, subd. (e), 708.130, subd. (a), & 708.150, subd. (b), Mendocino Superior Court Orders to Appear for Examination, filed January 11, 2019 and January 31, 2011.)

(6) **Plaintiff’s Counsel’s Right to Issue Subpoenas.** Plaintiff’s continuing right to have his counsel of record issue civil *subpoenas duces tecum* to third parties with information about casino assets, especially (i) banks holding casino assets, (ii) wholly owned tribal corporations to which casino assets have been inequitably or fraudulently transferred and (iii) former financial officers of the Defendant, with financial information related to casino assets pursuant to CCP sections 1985 and 708.130(a). (Civ. Proc. Code §§ 1985 & 708.130, subd. (a).) In particular, Plaintiff intends to issue third party civil subpoenas duces tecum to:

- (a) Kelli Galindo Jaynes, Treasurer to Defendant, Coyote Economic Development Corporation (“CEDCO”) and Coyote Valley Entertainment Enterprises (“CVEE”), 2014-2018; current candidate for Tribal Vice-Chairperson
- (b) Richard Hinrichs, Controller, Coyote Valley Casino, CVEE;
- (c) Kimberly Ordiway, Chief Financial Officer, Coyote Valley Casino, CVEE; and
- (d) All banks holding Defendant’s casino assets in account.

(7) **Plaintiff’s Right to Name Witnesses from Defendant Entity.** Plaintiff’s right to name representatives of the Defendant tribal organization as witnesses pursuant to CCP sections 708.130(a) and 708.150(b) (Civ. Proc. Code §§ 708.110, 708.120, 708.130, subd. (a) [expressly providing that “[w]itnesses may be required to appear and testify before the court . . . in [a debtor’s] examination proceeding . . . in the same manner as upon the trial of an issue.], & 708.150, subd. (b) [expressly allowing that an “order to appear for an examination” prepared by the judgment creditor may require “the appearance of a specified individual” on behalf of the organizational entity]; 1 Ahart et al., *Cal. Practice Guide: Enforcing Judgments and Debts* (The Rutter Group 2018) ¶¶ 6:1291, 6:1291-6:1293.1, p. 6G-6 [noting at ¶ 6:1291 that if the examinee is an “entity, the judgment creditor has the option of designating in the

EXHIBIT 1

1 application and order the person who is to appear at the exam on the entity's
2 behalf."]; Super. Ct. L.A. County, Local Rules, rule 3.221(a), Application [for order
3 to appear for examination in judgment debtor proceedings] [affirmatively requiring
4 designation of a natural person to appear on behalf of an organizational entity at a
5 debtor's examination].)

6 **(8) Examination Concerning Asserted Testimonial Privilege.** Plaintiff's right to
7 examine witnesses, including Ruth Alcantra, concerning the factual and legal basis of
8 Defendant's frivolous and unmeritorious claim of testimonial privilege supposedly
9 based on a putative tribal court order allegedly interpreting putative tribal law under
10 the putative October 4, 1980 tribal constitution. (Evid. Code, §§ 930-1070 [no
11 testimonial privilege based on tribal law is found in the California Evidence Code];
12 *Findleton v. Coyote Valley Band of Pomo Indians* (2016) 1 Cal.App.5th 1194, 1217
13 ["*Findleton I*"] [expressly holding that Defendant Tribe "effected an express waiver .
14 . . . that was clear and unequivocal" with respect to casino assets]; *Findleton v.*
15 *Coyote Valley Band of Pomo Indians* (2018) No. A150444, at pp. 7-9, 11-13
16 ["*Findleton II*"] [holding that creation of a tribal court years after formation of the
17 contract and commencement of the action to compel arbitration did not displace the
18 subject matter jurisdiction of the state court under federal law to enforce the
19 arbitration agreement]; California Uniform Foreign-Country Money Judgments
20 Recognition Act, Code Civ. Proc., §§ 1713 – 1725, inclusive [tribal court injunction
21 categorically ineligible for formal recognition because not a money judgment];
22 *Hurtado v. Superior Court* (1974) 11 Cal.3d 574, 581 [requiring party seeking
23 enforcement of foreign law by a California court to file timely choice of law
24 determination motion, which Defendant Band never did].)

25 **(9) Plaintiff's Planned Motion in Limine.** In the absence of any controlling local rule
26 or standing order of the Mendocino Superior Court, Plaintiff seeks guidance from the
27 Court pursuant to California Rules of Court, rule 3.1112(f), concerning the
28 calendaring and briefing schedule for Plaintiff's planned motion in limine concerning

EXHIBIT 1

1 Defendant's assertion of a completely frivolous and unmeritorious testimonial
2 privilege that defense counsel has repeatedly used to disrupt and delay the Debtor's
3 Examination based on a putative foreign tribal court order allegedly interpreting
4 putative tribal law under the putative October 4, 1980 tribal constitution. (Cal. Rules
5 of Court, rule 3.1112, subd. (f) [providing that the "timing and place of the filing and
6 service of the motion are at the discretion of the trial judge."])

7 **(10) Consequences of Defendant's Unfair Surprise.** Plaintiff seeks guidance from the
8 Court concerning Defendant's blatant acts of unfair surprise and a schedule for filing
9 opposition papers related to Defendant's completely unnecessary, dilatory and
10 prejudicial service on Plaintiff on Thursday, October 24, 2019, at 4:17 P.M., only **18**
11 **hours and 13 minutes** before the scheduled hearing on October 25, 2019, at 10:30
12 A.M., in the Mendocino Superior Court, of Defendant's incorrectly denominated
13 "Notice of Objections and Motions in Limine to Quash Certain Judgment Debtor
14 Examination Orders; Request for Preliminary Examination of Ruth Alcantra."
15 Defendant filed no motion in limine. Defendant filed, instead, a motion to quash
16 orders to appear that was misleadingly denominated as a motion in limine. It did so
17 without the minimum required seven (7) day's advance notice. (Code Civ. Proc., §
18 1987.1; *Lee v. Swansboro Country Property Owners Assn*, 151 Cal.App.4th 575,
19 582-583 [motion to quash subpoena filed 7 days before debtor's examination gave
20 judgment creditor time to respond and was timely and "reasonably made" under CCP
21 section 1987.1.] The supporting declaration of Little Fawn Boland, Esq., dated
22 October 22, 2019, constitutes improper witness impeachment and violates Evidence
23 Code sections 350 (irrelevant), 352 (probative value outweighed by prejudicial
24 effect), 403 (lacks foundation), 702 (lacks personal knowledge), and 800-803
25 (improper opinion testimony). (Evid. Code §§ 350, 352, 403, 702, & 800-803.)

26 **(11) Enforcement of Disentitlement Doctrine.** Having raised the issue in Plaintiff's
27 Motion Objecting to Defendant's Election to Use Appendix on Appeal, Plaintiff
28 seeks recognition from the Court that as a result of Defendant's continuing

EXHIBIT 1

1 contumacious violation of the April 25, 2017 order compelling arbitration, Defendant
2 is disentitled to any and all affirmative relief from this Court until Defendant obeys
3 the order compelling arbitration. The disentanglement doctrine “prevents a party from
4 asking the court for relief and, at the same time, disobeying a court order.” (Modern
5 Dictionary for the Legal Profession (4th ed. 2008), at p. 296, col. 2.) The
6 disentanglement doctrine grants trial courts the discretionary authority to deny a request
7 for affirmative relief from a litigant who continues to defy a trial court’s orders. It is
8 well-established in both criminal and civil law fields that the “disentanglement doctrine
9 . . . may be employed at both the trial and appellate court level as a means of
10 precluding the opposing party from obtaining affirmative relief when he or she [or it]
11 has disobeyed other orders warranting a stay or dismissal of the relief sought.”
12 (Hogoboom & King, *Cal. Practice Guide: Family Law* (The Rutter Group 2019) ¶
13 16:327.7, p. 16-116.) Further, “no formal judgment of contempt is required under
14 the doctrine of disentanglement.” (*Gwartz v. Weilert*, (2014) 231 Cal.App.4th 750, 757-
15 758; *Stoltenberg v. Ampton Investments Inc.* (2013) 215 Cal.App.4th 1225, 1229.)

16 **(12) Setting Future Dates for Resumption of Debtor’s Examination.** Setting future
17 dates for resumption of the Debtor’s Examination following the session on
18 November 15, 2019 on **Friday, December 13, 2019** and **Friday, January 17, 2020**
19 to accommodate Plaintiff’s planned issuance of third-party *subpoenas duces tecum*.

20 **4. Status of Plaintiff’s Document Production Requests.** The following is a brief
21 chronology of Plaintiff’s good faith, informal and mandatory requests for production of documents
22 related to casino assets, none of which has resulted in the production of any documents whatsoever
23 by Defendant:

- 24 **(1)** Letter from Plaintiff’s Counsel Dario Navarro to Defense Counsel Little Fawn
25 Boland, Esq. (Apr. 29, 2019) at p. 2, paras. (1)-(2) [requesting resumption of
26 Debtor’s Examination on May 6, 2019 and informally requesting production of
27 specified documents related to casino assets].;
- 28 **(2)** Letter from Plaintiff’s Counsel to Defense Counsel and Affiliated Counsel (Aug. 10,
2019), at pp. 4-5, numbered paras. (1)-(2) [requesting resumption of Debtor’s

EXHIBIT 1

1 Examination on September 20, 2019 and informally requesting production of
2 specified documents related to casino assets].);

- 3 (3) Letter from Plaintiff's Counsel Dario Navarro to Defense Counsel Glen W. Peterson,
4 Esq. and Affiliated Counsel Sara Dutschke Setshwaelo, Esq. (Aug. 22, 2019), at p. 3,
5 numbered para. (4) and p. 9, para. 6 [reminding defense counsel of the best practices
6 for discovery recommended by the State Bar of California.] (Board of Governors,
7 State Bar of California, *California Attorney Guidelines of Civility and*
8 *Professionalism* (adopted July 20, 2007) § 9, para. 1, at p. 6 [suggesting as best
9 practice that attorneys, early in the discovery process, "explore voluntary disclosure,
10 which includes identification of issues, identification of persons with knowledge of
11 such issues, and exchange of documents."]);
- 12 (4) Plaintiff's First Set of Judgment Debtor Requests for Production to Defendant
13 (served Aug. 13, 2019 pursuant to Code Civ. Proc. §§ 708.030 & 2031.210);
- 14 (5) Plaintiff's Amended First Set of Requests for Production of Documents to Defendant
15 (served Aug. 28, 2019 pursuant to Code Civ. Proc. §§ 708.030 & 2031.210) [no
16 response whatsoever from Defendant by October 2, 2019 deadline] [*Document*
17 *Requests*];
- 18 (6) Meet-and-Confer Letter from Plaintiff's Counsel Dario Navarro to Defense Counsel
19 and Affiliated Counsel Regarding (1) Defendant's Failure to Respond to Plaintiff's
20 Amended First Set of Requests for the Production of Documents of August 28, 2019
21 and (2) Plaintiff's Planned Filing of a Motion to Compel Production of Documents
22 Following Defendant's Failure to Respond (Oct. 8, 2019) at pp. 1-6 [explaining in
23 detail the precise legal basis for the document requests and informing Defendant of
24 Plaintiff's intention to file a motion to compel production of documents given the
25 absence of any response whatsoever by the October 2, 2019 deadline; Defendant did
26 not respond] (Code Civ. Proc. §§ 708.030 & 2031.210, subd. (b)(2); Super. Ct.
27 Mendocino County, Local Rules, rule 2.6);
- 28 (7) Meet-and-Confer Letter from Plaintiff's Counsel Dario Navarro to Defense Counsel
and Affiliated Counsel Regarding Proposed Hearing Date for Plaintiff's Planned
Motion to Compel Production of Documents (Oct. 28, 2019) at pp. 1-2 [proposing a
hearing date of Friday, December 6, 2019 for Plaintiff's motion to compel
production of documents and requesting a response from Defendant by Wednesday,
October 30, 2019; Defendant did not respond] (Code Civ. Proc. §§ 2016.040 &
2031.310, subd. (b)(2); Super. Ct. Mendocino County, Local Rules, rule 2.6.)

EXHIBIT 1

1 Defendant has made no response whatsoever to Plaintiff's August 28, 2019 *Document Requests*
2 nor did Defendant respond to Plaintiff's meet-and-confer letters of October 8, 2019 and October
3 28, 2019 which explained the legal basis of Defendant's obligation to respond to the *Document*
4 *Requests* and requested approval of the December 6, 2019 hearing date. As the result of
5 Defendant's continuing failure to supply requested documents or meaningfully engagement in
6 the meet-and-confer process, Plaintiff's ability to prepare for the Debtor's Examination has
7 been severely prejudiced. (Code Civ. Proc., §§ 2016.070 [permitting discovery in aid of
8 enforcement of a money judgment only to the extent provided in Article 1 (commencing with
9 Section 708.010) of Chapter 6 of Title 9 of Part 2.]; 708.030 [applying Civil Discovery Act
10 provisions, codified at CCP sections 2031.010 – 2031.510, inclusive, to inspection demands and
11 document requests made pursuant to CCP section 708.030]; 2031.010 – 2031.510, inclusive.)

12 **5. Clarification of Total Amount Subject to Collection.** For purposes of clarification,
13 Plaintiff would like to inform Defendant and the Court that the total amount of money judgments
14 won by Plaintiff currently subject to collection by writ of execution, with interest calculated to
15 November 15, 2019, excluding costs and attorney's fees for enforcement of judgment expenses
16 since December 10, 2018, is **\$238,700.37**.¹

17 The output of a detailed Excel spreadsheet model entitled, "Table 1: Calculation of Total
18 Amount of Money Judgments Subject to Collection as of Oct. 25, 2019" ("**Table 1**") is attached to

19
20 1. As a result of the prevailing party fee provision in the underlying contract in this case, attorney's fees incurred
21 in the enforcement of the outstanding judgments are recoverable by the Plaintiff judgment creditor from the
22 Defendant judgement debtor, including all attorneys' fees incurred by Plaintiff while attempting to enforce his
23 money judgments from December 10, 2018 until the present. Section 685.040 of the Code of Civil Procedure
24 ("CCP") provides in pertinent part as follows: "Attorney's fees incurred in enforcing a judgment are included
25 as costs collectible under this title if the underlying judgment includes an award of attorney's fees to the
26 judgment creditor pursuant to subparagraph (A) of paragraph (10) of subdivision (a) of Section 1033.5."
27 (Code Civ. Proc., § 685.040 [emphasis added].) CCP Section 1033.5(a)(10)(A), the provision cross-referenced
28 in CCP Section 685.040, provides in pertinent part as follows:

(a) The following items are allowable as costs [to a prevailing party] under Section 1032: . . . (10)
Attorney's fees, when authorized by any of the following: . . . (A) Contract.

(Code Civ. Proc., § 1033.5, subd. (a)(10)(A).) Since the underlying judgments all include an award of
attorney's fees to the Plaintiff judgment creditor pursuant to CCP Section 1033.5(a)(10)(A), attorneys' fees
incurred by the Plaintiff judgment creditor may also be included as enforcement costs recoverable against
Defendant. These attorneys' fees plus costs will be subject to a motion for attorneys' fees and, if granted, a
Memorandum of Costs After Judgment ("Form MC-120") in the near future. They are not included in this
accounting of costs and attorneys' fees but are nonetheless collectible from Defendant in the future.

EXHIBIT 1

1 this letter as Exhibit 1. The formulas and calculations of the Excel model in **Table 1** conform to
2 the calculation requirements of California Judicial Council Form MC-013-INFO, the controlling
3 provisions of the Code of Civil Procedure and the California Constitution. (Code Civ. Proc., §§
4 685.040, 685.050 *et seq.*, 685.070, & 685.090.) The legal interest rate of 10 percent was used to
5 calculate the interest due from the date of entry of each judgment. (Code Civ. Proc., §§ 685.010,
6 685.070, subd. (d), 685.020, subd. (a), & Cal. Const., art. XV, § 1.) Please see below a summary
7 of the calculations embedded in Table 1 for your reference.

8 **Summary of Calculation of Money Judgments Subject to Collection as of Nov. 15, 2019**

| 9 Money Judgment | Total Base Judgments | Interest to Oct. 25, 2019 | Totals |
|-------------------------------|-----------------------------|----------------------------------|----------------------------|
| 10 1. First Appeal | \$38,900.66 | \$3,408.60 | \$42,309.26 |
| 11 2. Second Appeal | \$12,701.20 | \$974.98 | \$13,676.18 |
| 12 3. Sanctions Order | \$86,457.00 | \$8,078.53 | \$94,535.53 |
| 13 4. Prevailing Party | \$82,397.84 | \$5,781.56 | \$88,179.40 |
| 14 GRAND TOTALS | \$220,456.70 | \$18,243.67 | <u>\$238,700.37</u> |

15
16
17 Please note that all appeals have been exhausted or are unavailable with respect to fee awards
18 associated with (1), (2) and (4) above. Since Defendant failed to pay the optional undertaking in
19 the sum of \$86,457.00 in connection with the December 10, 2019 sanctions order, there is no stay
20 of trial court proceedings or the ongoing Debtor's Examination process, including all the remedies
21 available to Plaintiff under the California Enforcement of Judgments Law. (Code Civ. Proc., §§
22 680.010 – 724.260.)

23 **6.** This Status Conference Statement was prepared by Plaintiff's counsel Dario Navarro.

24 **Dated:** November 2, 2019

Respectfully submitted,

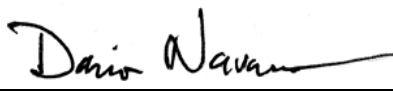
25
26
27 By: 
Dario Navarro
Attorney for Plaintiff ROBERT FINDLETON

EXHIBIT 1

EXHIBIT 1

Table 1: Calculation of Total Amount of Money Judgments Subject to Collection as of Nov. 15, 2019

| Legal Interest Rate Daily Interest Rate | 10% (Total amount of judgment • 10%) / 365 | Daily Interest | Base Fees | Base Costs | Interest | Fee to Issue | Total | Total Base Judgments | Interest to 10/25/19 | TOTALS |
|---|---|----------------|-----------|------------|----------|--------------|-----------|----------------------|----------------------|-------------------|
| 1. First Appeal | | | | | | | | | | |
| Award of Attorneys' Fees of \$28,148.75 and Costs of \$4,591.72 | | | 28,148.75 | 4,591.72 | 6,135.19 | 25 | 32,740.47 | | | |
| Amended Memorandum of Costs of Costs After Judgment [1] | | | | | 6,135.19 | 25 | 6,160.19 | | | |
| Subtotal on First Appeal to 12/13/19 | | | 28,148.75 | 4,591.72 | 6,135.19 | 25 | 38,900.66 | 38,900.66 | 3,408.60 | |
| Interest \$8.97/day (10/31/18-10/25/19 = 380 days) | | 8.97 | | | 3,408.60 | | 3,408.60 | | | |
| Total for First Appeal to 10/25/19 | | | 28,148.75 | 4,591.72 | 9,543.79 | 25 | 42,309.26 | | | 42,309.26 |
| 2. Second Appeal (awarded effective 2/15/19) | | | | | | | | | | |
| Award of Attorneys' Fees of \$12,130.00 and Costs of \$571.20 | | | 12,130.00 | 571.20 | 949.98 | 25 | 12,701.20 | 12,701.20 | 974.98 | |
| Interest \$3.48/day (2/15/19-10/25/19 = 273 days) | | 3.48 | | | 949.98 | | 974.98 | | | |
| Total for Second Appeal to 10/25/19 | | | 12,130.00 | 571.20 | 949.98 | 25 | 13,676.18 | | | 13,676.18 |
| 3. Sanctions and Contempt of Court Order of 12/10/18 [2] | | | | | | | | | | |
| Award of Attorneys' of \$70,500 (Morgan Lewis) | | | 70,500.00 | | | | 70,500.00 | | | |
| Award of Attorneys' Fees of \$9,315 (Pemberton) | | | 9,315.00 | | | | 9,315.00 | | | |
| Costs Incurred by Findleton of \$6,642.00 | | | | 6,642.00 | | | 6,642.00 | | | |
| Subtotal for All Attorneys' Fees and Costs | | | 79,815.00 | 6,642.00 | | | 86,457.00 | 86,457.00 | 8,078.53 | |
| Interest 23.69/day (12/10/18-10/25/19 = 340 days) | | 23.69 | | | 8,053.53 | 25 | 8,078.53 | | | |
| Total for Motion for Sanctions and Contempt to 10/25/19 | | | 79,815.00 | 6,642.00 | 8,053.53 | 25 | 94,535.53 | | | 94,535.53 |
| 4. Motion for Determination of Prevailing Party (3/5/19) | | | | | | | | | | |
| Attorney Fees as Reduced (Morgan Lewis) | | | 74,673.75 | | | | 74,673.75 | | | |
| Costs Incurred by Findleton of \$7,724.09 | | | | 7,724.09 | | | 7,724.09 | | | |
| Sub-Total for Prevailing Party Motion | | | 74,673.75 | 7,724.09 | | | 82,397.84 | 82,397.84 | 5,781.56 | |
| Interest 22.57/day (3/5/19-10/25/19 = 255 days) | | 22.57 | | | 5,756.56 | 25 | 5,781.56 | | | |
| Total for Prevailing Party Motion to 10/25/19 | | | 74,673.75 | 7,724.09 | 5,756.56 | 25 | 88,179.40 | | | 88,179.40 |
| GRAND TOTALS | | | | | | | | 220,456.70 | 18,243.67 | 238,700.37 |

Notes

- [1] Calculated with interest to 10/31/18 - WRIT stamped 12/13/18 in the amount of \$38,900.73.
- [2] Defendant Band filed this appeal on 2/6/19 without posting an undertaking and without any stay of trial court proceedings.
- [3] All calculations in this model conform to the requirements of California Judicial Council Form MC-013-INFO and applicable law.

EXHIBIT 1

PROOF OF SERVICE

11/2/19 PLAINTIFF'S STATUS CONFERENCE STATEMENT

Case Name: *Findleton v. Coyote Valley Band of Pomo Indians*

Superior Court Case Number: SCUK CVG 12-59929

1. At the time of service, I was at least 18 years of age and not a party to this action. I am a resident of or employed in the county where the mailing took place. My residence or business address is 7240 Uva Drive, Redwood Valley, California 95470. My electronic service address is stuartzeller@sbcglobal.net.

2. I served a copy of:

11/2/19 PLAINTIFF'S STATUS CONFERENCE STATEMENT

("said document") on the persons at addresses listed in items 4, 5, 6 and 7:

- BY FIRST-CLASS MAIL:** I enclosed said document in a sealed addressed envelope and deposited the sealed envelope containing said document with the United States Postal Service with first-class postage fully prepaid at a United States Post Office in Redwood Valley, California; and
- BY ELECTRONIC MAIL:** I electronically served a true copy of said document to said persons via electronic mail to the email addresses listed in item 8.

3. Said document was placed in the mail:

- a. on (date): November 2, 2019
b. at (City and State): **Redwood Valley, California.**

4. The envelopes were addressed and mailed as follows to counsel of record for the Defendant-Appellant:

(1) **Keith Anderson, Esq.**
Ceiba Legal, LLP
35 Madrone Park Circle
Mill Valley, CA 94941

(3) **Glenn W. Peterson, Esq.**
Peterson Watts Law Group, LLP
2267 Lava Ridge Court, Suite 210
Roseville, CA 95661

(2) **Little Fawn Boland, Esq.**
Ceiba Legal, LLP
35 Miller Avenue, No. 143,
Mill Valley, CA 94941

On behalf of: Coyote Valley Band of Pomo Indians ("Defendant-Appellant")
7601 North State Street, Redwood Valley, CA 95470

-1-

PROOF OF SERVICE FOR

11/2/19 PLAINTIFF'S STATUS CONFERENCE STATEMENT

EXHIBIT 1

- 1
2
3
4
5
5. An additional copy of said document was addressed and mailed to the following attorney, representing the Coyote Economic Development Corporation ("CEDCO") and Coyote Valley Entertainment Enterprises ("CVEE"), neither of which is a party in this case:

6
7
8
9

Sara Dutschke Setshwaelo, Esq.
Partner, Dentons US, LLP
One Market Plaza, Spear Tower, 24th Floor,
San Francisco, CA 94105

- 10
11
6. Pursuant to California Rules of Court, rule 8.36(b), said document was mailed to the Ukiah Branch of the Mendocino Superior Court at the following street address:

12
13
14
15
16
17

Hon. John A. Behnke
Judge of the Superior Court
c/o Court Clerk
Mendocino Superior Court
Ukiah Branch, Dept. H
100 North State Street
Ukiah, CA 95482

- 18
19
7. Electronic service address of each person served:

- 20
21
22
23
24
25
26
27
28
- (1) **Keith Anderson, Esq.**
Email: keith@ceibalegal.com
- (2) **Little Fawn Boland, Esq.**
Email: littlefawn@ceibalegal.com
- (3) **Glenn W. Peterson, Esq.**
Email: gpeterson@petersonwatts.com
- (4) **Sara Dutschke Setshwaelo, Esq.**
Email: sara.setshwaelo@dentons.com
- (5) **Honorable John A. Behnke**
Email: DepartmentH@mendocino.courts.ca.gov

On (date): November 2, 2019 at (time): 1:33 a.m. p.m.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Redwood Valley, California on the date indicated below:

Date: November 4, 2019



Stuart Zeller

Exhibit 2

Pulawa Transcript

**Reporter's Transcript of Debtor's Examination of
Amanda Pulawa (April 26, 2019, at 3:05 p.m.) (taken at
Mendocino County Courthouse, Ukiah, California, as
reported by Anne Ramirez, CSR 6186)**

EXHIBIT 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MENDOCINO

ROBERT FINDLETON,

Plaintiff,

vs.

No. SCUK-CVG-2012-59929

COYOTE VALLEY BAND OF
POMO INDIANS,

Defendants.

_____ /

DEBTOR'S EXAMINATION OF AMANDA PULAWA

Taken at Mendocino County Courthouse, Ukiah, California,
on Friday, April 26, 2019, at 3:05 p.m.
Reported by Anne Ramirez, CSR 6186.

ADAIR, POTSWALD & HENNESSEY
Certified Shorthand Reporters
P. O. Box 761, Ukiah, California
(707) 462-8420 and (800) 747-3376

EXHIBIT 2

1 APPEARANCES OF COUNSEL

2 For the Plaintiff: DARIO F. NAVARRO
3 Attorney at Law
3655 Memory Lane
4 South Lake Tahoe, California 96150

5 And

6 MICHAEL P. SCOTT
7 Attorney at Law
Law Offices of Michael P. Scott
8 Post Office Box 3802
Santa Rosa, California 95402

9 For the Defendants: LITTLE FAWN BOLAND
10 Attorney at Law
Ceiba Legal, LLP
35 Miller Avenue #143
11 Mill Valley, California 94941

12 And

13 KEITH J. ANDERSON
14 Attorney at Law
35 Madrone Park Circle
Mill Valley, California 94941

15 Also Present: John A. Behnke, Judge

16
17 - - -

18
19 I N D E X

20
21 Examination by Mr. Scott 3, 18
22 Examination by Mr. Navarro 15, 20

23
24
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EXHIBIT 2

1 (Proceedings held in open court.)

2 - - -

3 THE COURT: Could you swear the witness.

4 THE CLERK: Can I have the three of you stand
5 and raise your right hand.

6 (Whereupon Little Fawn Boland, Keith
7 Anderson, and Amanda Pulawa were sworn by the
8 clerk.)

9 THE CLERK: If you could please state your
10 name.

11 THE WITNESS: Amanda Pulawa, P-u-l-a-w-a.

12 (Brief pause.)

13 (Judge Behnke and clerk not present.)

14 - - -

15 EXAMINATION

16 Q (BY MR. SCOTT) Ms. Pulawa, would you
17 please -- for the record, my name is Mike Scott. I'm
18 the attorney for Mr. Findleton for this debtor's
19 examination. You obviously know defense counsel here
20 from the tribe. And Dario, Mr. Dario Navarro, here is
21 co-counsel with me for Mr. Findleton.

22 Ms. Pulawa, would you please give us a -- tell
23 us what your official position is with the tribe.

24 MS. BOLAND: Objection. She has a restraining
25 order from the tribal court of the Coyote Valley Tribe,

EXHIBIT 2

1 and she's not allowed to participate in these
2 proceedings.

3 MR. NAVARRO: And we respond to that objection
4 that the Coyote Valley Tribal Court, however august a
5 judicial body it may be, has no jurisdiction in the
6 courtroom of the State of California to restrict the
7 testimony of a duly-called witness in a debtor's exam.
8 So we respond that that objection is unfounded and we
9 will refer to the Court.

10 Furthermore, --

11 MR. ANDERSON: Cite to a law on that one,
12 please.

13 Q (BY MR. SCOTT) Ms. Pulawa, a moment ago when
14 you were sworn in, you were asked to affirm that you had
15 been sworn in. I didn't hear you say anything. Did you
16 say anything in response?

17 MR. ANDERSON: We object to that question as
18 well. There's an injunction from the tribal court.

19 MR. NAVARRO: On the record will defense
20 counsel state clearly that they are going to object to
21 every single question we ask, no matter the topic, on
22 the basis of the order of the tribal court?

23 MS. BOLAND: Yes.

24 MR. ANDERSON: I've been ordered to do so,
25 yes.

EXHIBIT 2

1 MR. NAVARRO: Does defense counsel understand
2 that in this court refusal to respond to a direct
3 question in a debtor's exam could place the witness in
4 contempt of court?

5 MR. ANDERSON: We are aware of that. And if
6 it comes down to it, if the judge decides that this is
7 contemptuous, we'll cross that bridge when we get there;
8 but we have been ordered by the tribal court not
9 participate in these proceedings.

10 MS. BOLAND: If Ms. Pulawa would like to --

11 MR. NAVARRO: This is why I asked the judge to
12 be on standby. I'd like to ask the judge for a ruling
13 on whether she is in contempt of court and refusing to
14 answer the debtor exam questions and whether she should
15 be immediately arrested, which we will advocate.

16 MS. BOLAND: She has not refused anything;
17 these are statements we are making.

18 MR. SCOTT: Can we go off the record.

19 (Off the record.)

20 (Judge Behnke present.)

21 THE COURT: So we're reconvening. I don't
22 have a clerk, but under the OEX procedure you're allowed
23 to consult with a judge to, you know, have rulings on
24 objections and the like.

25 So I see Ms. Pulawa is on the witness stand.

EXHIBIT 2

1 And what's going on?

2 MR. NAVARRO: Your Honor, we've been informed
3 by defense counsel that they will object to every
4 question that we ask the witness on the grounds that she
5 is subject to a tribal court order preventing her to
6 give testimony in this court. We responded that the
7 tribal court order does not apply and there's no
8 jurisdiction for the application of that order in this
9 court. And we ask Your Honor to -- to rule on the
10 objection of the defendant that the tribal court order
11 preempts state law and your orders and prevents the
12 witness from testifying.

13 THE COURT: Did you want to be heard?

14 MS. BOLAND: Yes, Your Honor.

15 We would just like to have it documented on
16 the record that you're overriding our objection and have
17 this documented. We feel duty-bound by our client and
18 by the tribal court order to raise these objections.
19 They can be overruled, but we feel we must raise them at
20 each question.

21 MR. ANDERSON: Well, not only that, but we'll
22 be subject to sanctions from the tribal court as well.
23 Ms. Pulawa is a tribal member. I'm not sure how the
24 court order doesn't apply to her. It's difficult for me
25 to comprehend.

EXHIBIT 2

1 THE COURT: Okay. So you presented -- "you"
2 being the band -- presented this individual, Ms. Pulawa,
3 as a knowledgeable person to answer questions about, you
4 know, the tribe's assets, or at least the
5 casino-related, you know, assets. And we are in a
6 situation where the principles of comity have long
7 determined that this court has the ability to go
8 forward.

9 I recognize that you've gotten other orders,
10 you know, from a tribal court. I'm going to overrule
11 your objection and order that she answer the questions
12 related to the assets of the tribe or any casino assets
13 that are or were in the possession of the tribe or
14 transferred to one of those other entities.

15 So the objection's overruled. The witness is
16 directed to answer.

17 MS. BOLAND: Can Your Honor please stay? We
18 only have 15 more minutes to --

19 THE COURT: Can I please what?

20 MS. BOLAND: Please stay for the remainder of
21 this. Is that customary or not customary?

22 THE COURT: No. I've never -- in the time
23 I've been a judge, I think once or twice I've been asked
24 to rule on an objection, but typically we've done that
25 by phone where the people were somewhere else. Once or

EXHIBIT 2

1 twice, maybe 10 or 11 years ago, somebody came back into
2 court and we made orders. But I'm not going to stay.

3 MS. BOLAND: Okay.

4 THE COURT: If there are additional problems,
5 I'm right next door.

6 MS. BOLAND: Thank you, Your Honor.

7 MR. SCOTT: Well, I would just ask, Your
8 Honor, if -- rather than have Your Honor leave and then
9 go through the same ruse again where she refuses and is
10 instructed by defense counsel not to answer the
11 question, if we could get a representation from defense
12 counsel if they're going to maintain today, under any
13 circumstances, that they are going to instruct the
14 witness not to answer the question, because otherwise
15 we're wasting our time.

16 THE COURT: Are you?

17 MS. BOLAND: We will not allow the witness and
18 we will instruct the witness not to answer any questions
19 that relate to Coyote Valley Entertainment Enterprises
20 because there's no waiver of sovereign immunity from
21 that entity. To the extent they ask questions not
22 related to Coyote Valley Entertainment Enterprises that
23 are within the purview of Ms. Pulawa's knowledge as the
24 tribal treasurer, we just put on the record that we
25 object pursuant to the tribal court order, but we'll not

EXHIBIT 2

1 continue to say the same thing over and over again.

2 MR. SCOTT: So, Your Honor, for the record
3 she's objected and instructed her not to answer
4 questions such as what is her official title with the
5 tribe and what her duties are. So let's not go through
6 this ruse.

7 THE COURT: So, first, you know, just a very
8 short time ago it was represented to the Court that the
9 casino assets were transferred to another entity.

10 MS. BOLAND: Yes.

11 THE COURT: And, you know, we went through
12 this business about what documents were produced and
13 what documents weren't produced. But if Mr. Findleton
14 has any recourse in this case, it's resource to, you
15 know, essentially casino assets. And so whether it was
16 a representative of the group to whom the assets had
17 been conveyed or whether it's in her capacity as a
18 representative of the tribe, I'm going to direct that
19 she answer those questions.

20 If you're going to direct her not to answer a
21 question like what's her job, my response to that would
22 be: Well, what's the point in conducting the
23 examination?

24 So why don't we start over. Why don't you ask
25 what questions you have. If they instruct not to answer

EXHIBIT 2

1 over my direction that they answer, then, you know, you
2 can seal up the transcript and make whatever motion you
3 wish to make.

4 MR. ANDERSON: And, Your Honor, I just want to
5 be clear because she is subject to sanctions whether she
6 answers or does not answer. So we're saying today that
7 she is subject to criminal sanctions if she does not
8 answer.

9 THE COURT: So I am directing that the
10 representative that was produced as the knowledgeable
11 person about, you know, casino assets answer questions
12 about casino assets. I'm not going to engage in a
13 back-and-forth about it and, you know, directing that
14 she answer the questions.

15 MS. BOLAND: But we never said we were
16 bringing somebody here today who could answer questions
17 about casino assets. We wrote in our moving papers that
18 we needed to have that answer clarified and we were
19 bringing someone from the tribe, not from CVEE. So not
20 from the casino.

21 THE COURT: You know, when the order of
22 examination was filed you hadn't revealed to the
23 plaintiff or the Court that the transfer of casino
24 assets had been made up to that point.

25 MS. BOLAND: Uh-huh.

EXHIBIT 2

1 THE COURT: So maybe we are at a point where
2 this is a meaningless exercise, but I fail to see how
3 asking her what her job is could be a problem. And if
4 she doesn't have information about what assets were
5 transferred from the tribe to CVEE, then she can simply
6 say that --

7 MS. BOLAND: Okay.

8 THE COURT: -- and we can do this again with
9 some other person on another day.

10 MS. BOLAND: Okay. We can just proceed with
11 her then. Thank you, Your Honor. Sorry.

12 MR. SCOTT: Thank you, Your Honor.

13 MR. NAVARRO: Thank you, Your Honor.

14 (Judge Behnke leaves the room.)

15 Q (BY MR. SCOTT) Ms. Pulawa, what is your
16 official position with the tribe?

17 A The tribal treasurer.

18 Q I'm sorry?

19 A Tribal treasurer.

20 Q Tribal treasurer. Is that an elected or
21 appointed position?

22 A I have been ordered by the Coyote Valley
23 Tribal Court not to participate in these proceedings
24 because they are illegal under Coyote Valley law. I am
25 an employee of the tribe and I am duty-bound to follow

EXHIBIT 2

12

1 the laws and orders of the tribe and its courts. I will
2 answer questions under duress if threatened by the Court
3 with criminal sanctions, but will -- do not -- so under
4 protest or forcing me to respond to a violation of my
5 civil rights and as civil rights to the tribe and its
6 members.

7 MR. NAVARRO: So are you deliberately
8 disobeying the order of the -- of the judge of this
9 court that you answer questions concerning the casino
10 assets?

11 THE WITNESS: Yes.

12 MS. BOLAND: You can go ahead and answer
13 whatever questions you like. If they concern casino
14 assets and there's no waiver of sovereign immunity, I
15 will object at that time.

16 But please proceed with your line of
17 questioning.

18 Q (BY MR. SCOTT) What is the Coyote Valley Band
19 of Pomo Indians, what is their Federal Tax ID number?

20 A I don't know that one.

21 Q Did you know it at one time?

22 A No.

23 Q Do you have that information available to you
24 in your office?

25 A No. I can get it, but I don't have it on me

EXHIBIT 2

1 or in my office.

2 Q Okay. Do you have check-writing authority for
3 the tribe?

4 A No.

5 Q Okay. Do you make bank deposits on behalf of
6 the tribe?

7 A No.

8 Q What -- can you describe for me briefly what
9 your duties are as treasurer?

10 A Finances.

11 Q And by "finances" what do you mean
12 specifically?

13 A Just grants, federal taxes, distributions from
14 the Coyote Valley Economic Development Corporation.

15 Q Okay. So you distribute funds that come
16 through the Coyote Valley Economic Development
17 Corporation; correct?

18 A No.

19 Q What do you mean by -- what did you just say
20 with regard to --

21 A I just -- I don't know.

22 Q You handle funds coming through CEDCO; is that
23 correct?

24 A No.

25 Q Do you handle funds coming from the Federal

EXHIBIT 2

1 Government to the tribe?

2 A No.

3 Q All right. What do you do exactly then?

4 A I don't know.

5 Q You don't know what you do exactly?

6 A Uh-uh.

7 MS. BOLAND: Can she say that she was just
8 elected?

9 THE WITNESS: I was just elected.

10 Q (BY MR. SCOTT) When were you elected?

11 A The end of January.

12 Q Was this a tribal -- tribal-wide vote for
13 that?

14 A Uh-huh.

15 Q What's your age currently?

16 A Thirty-six.

17 Q Thirty-six, okay. Can you describe for me
18 your -- how far you got in school, what the highest
19 grade you graduated from?

20 A Twelve, some college.

21 Q So you had some college after you graduated
22 high school?

23 A (Nodding head.)

24 Q And where did you graduate high school?

25 A Ukiah High.

EXHIBIT 2

1 Q Ukiah High. Where did you get your college
2 education or college --

3 A Mendocino.

4 Q Okay. What courses did you take there?

5 A Math, child development, and English.

6 Q Did you take any courses specifically that you
7 feel assist you as the tribal treasurer?

8 A No.

9 - - -

10 EXAMINATION

11 Q (BY MR. NAVARRO) Hello, this is Dario Navarro
12 on the record for Plaintiff Findleton.

13 Are you knowledgeable about the financial
14 accounts of the Coyote Economic Development Corporation
15 or the Coyote Valley Enterprise -- Entertainment
16 Enterprises?

17 A No.

18 MS. BOLAND: Objection. You don't have a
19 waiver from either of those entities and cannot held
20 them into court. She cannot make any representation on
21 behalf of either of those entities.

22 MR. NAVARRO: Our response is: We are not in
23 any way asking CEDCO or CVEE about their financial
24 accounts, we are simply asking the treasurer if she has
25 any knowledge about the tribe's wholly-owned

EXHIBIT 2

1 corporation. So the objection is ill-founded for the
2 record.

3 Q (BY MR. NAVARRO) I ask, again, are you
4 knowledgeable about the financial accounts of CEDCO and
5 CVEE?

6 A No.

7 Q You possess no information whatsoever or
8 knowledge about them?

9 A No.

10 Q Are you aware of any casino assets held by
11 Defendant Tribe?

12 A No.

13 Q Okay. To the best of your knowledge, are any
14 casino assets held by the Defendant Tribe?

15 A No.

16 Q Who is the financial officer of -- of CEDCO,
17 the Coyote Economic Development Corporation?

18 A I don't know.

19 MS. BOLAND: Do you mean CFO? What do you
20 mean by financial officer?

21 MR. NAVARRO: The chief financial officer of
22 the Coyote Economic Development Corporation, CEDCO.

23 Q (BY MR. NAVARRO) Do you know the name of the
24 chief financial officer of the Coyote Economic
25 Development Corporation?

EXHIBIT 2

1 A No.

2 Q Do you know the name -- or who is the chief
3 financial officer of the -- of Coyote Valley
4 Entertainment Enterprises?

5 A I don't know.

6 Q Can you produce a complete set of financial
7 statements of the Defendant Tribe for the last seven
8 years?

9 A No.

10 Q You cannot. And why can you not produce the
11 complete set of financial statements?

12 A For the tribe or the casino?

13 Q For the tribe -- from the tribe for the last
14 seven years.

15 MR. ANDERSON: Mr. Navarro, no individual
16 could do that, just to be clear on that.

17 MR. NAVARRO: She's the -- the treasurer of
18 the tribe has access to the financial records.

19 MR. ANDERSON: The question was does she have
20 access. In fact, that would be a tribal council
21 decision.

22 MR. NAVARRO: I'm asking in her official
23 capacity as tribal treasurer if she can produce specific
24 records.

25 MR. ANDERSON: I know. And she said no, and

EXHIBIT 2

1 you looked puzzled. So I wanted to explain why she
2 can't do that.

3 MS. BOLAND: Do you mean the audits?

4 MR. NAVARRO: Unfortunately, Mr. Anderson, you
5 are not under oath and testifying yet. So you may not
6 explain on the record and attest to facts. The witness
7 is responsible for doing that.

8 MR. ANDERSON: You seem to be pretending that
9 you're both the attorney and the judge.

10 MR. SCOTT: Let me ask a question.

11 MR. NAVARRO: Go ahead.

12 - - -

13 EXAMINATION

14 Q (BY MR. SCOTT) Can you tell us who the
15 construction lenders are for the tribe currently?

16 A I don't know that one.

17 Q Do you know -- you were asked a few moments
18 ago about whether you knew the chief financial officer
19 of either CEDCO or CVEE. Do you know anyone on the
20 board of either CEDCO or CVEE by name?

21 A Michael Hunter.

22 Q Michael Hunter. And can you tell us which of
23 the entities he is on the board of?

24 A I'm not sure.

25 Q Are you -- can you describe for us what bank

EXHIBIT 2

1 accounts the tribe holds?

2 A What do you mean "bank accounts"?

3 Q I mean do you have a checking account at "X"
4 bank and a savings account at "Y" bank? Can you
5 describe those for us?

6 A They have an account at Savings Bank and
7 Pinnacle.

8 Q And do you have those account numbers?

9 A No.

10 Q Do you have access to those account numbers?

11 A I would have to ask.

12 MS. BOLAND: Objection. Those accounts don't
13 hold any casino assets in them and, therefore, those
14 account numbers are irrelevant.

15 MR. NAVARRO: Our response is that the judge
16 said we are free to ask any questions about the accounts
17 of the tribe. And our purpose in asking the question is
18 to see if any casino assets might have been deliberately
19 or inadvertently placed in an account that isn't labeled
20 as a casino account. So as we interpret the judge's
21 order, we're free to ask any questions about any account
22 of the tribe, CEDCO, or CVEE.

23 MR. ANDERSON: I have a different
24 interpretation on that one.

25 Q (BY MR. SCOTT) Can you tell us -- do you know

EXHIBIT 2

1 where CEDCO has any bank accounts?

2 A No, I don't.

3 Q Do you know where CVEE has any bank accounts?

4 A No.

5 Q Are you aware of any other -- other than bank
6 accounts, are you aware of any other assets of either
7 CEDCO or CVEE, such as real estate, such as cash on
8 hand, anything like that?

9 A No.

10 - - -

11 EXAMINATION

12 Q (BY MR. NAVARRO) In your capacity as tribal
13 treasurer, do you routinely review the financial
14 statements of CEDCO or CVEE?

15 A No.

16 Q Do you ever, on any specific occasion, review
17 those -- have you ever reviewed the financial statements
18 of CEDCO and CVEE?

19 A No.

20 MS. BOLAND: I'm sorry, it's 3:30 now. So we
21 do have to leave to get down to the Bay Area to get our
22 daughter.

23 MR. SCOTT: Okay. Well, we will recess this.
24 We're not terminating it, but we will recess this until
25 a later time.

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MS. BOLAND: Thank you.
MR. NAVARRO: Thank you.
MR. SCOTT: Off the record.
(Off the record at 3:30 p.m.)
-ooOoo-

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REPORTER'S CERTIFICATE

I hereby certify that the above transcript of proceedings was taken down, as stated in the caption, and that the foregoing 21 pages represent a complete, true and correct transcript of the proceedings had thereon.

Dated: April 30, 2019


Anne Ramirez, CSR 6186
Court Reporter

[PROPOSED] ORDER

Good cause appearing therefor, the motion of Respondent Robert Findleton to augment the record on appeal is **GRANTED**.

IT IS HEREBY ORDERED that the record on appeal be augmented by adding the following document:

Plaintiff's Status Conference Statement of November 2, 2019 (served Nov. 2, 2019 and filed Nov. 4, 2019), pp. 1-13, in *Findleton v. Coyote Valley Band of Pomo Indians*, No. SCUK-CVG-12-59929 (Super. Ct. Mendocino County, originally filed Mar. 23, 2012).

IT IS HEREBY FURTHER ORDERED that, on the court's own motion, the record on appeal shall be corrected by adding the following document:

Reporter's Transcript of Debtor's Examination of Amanda Pulawa (April 26, 2019, at 3:05 p.m.) (taken at Mendocino County Courthouse, Ukiah, California, as reported by Anne Ramirez, CSR 6186), pp. 1-22, in *Findleton v. Coyote Valley Band of Pomo Indians*, No. SCUK-CVG-12-59929 (Super. Ct. Mendocino County, originally filed Mar. 23, 2012).

DATED: _____

PRESIDING JUSTICE

CERTIFICATE OF SERVICE

***MOTION TO AUGMENT RECORD ON APPEAL;
MEMORANDUM; DECLARATION OF DARIO NAVARRO;
EXHIBITS; PROPOSED ORDER***

Case Name: *Findleton v. Coyote Valley Band of Pomo Indians*

Court of Appeal Case Numbers: A159823

Superior Court Case Number: SCUK-CVG-12-59929

1. At the time of service, I was at least 18 years of age and not a party to this action. I am a resident of or employed in the county where the mailing took place. My residence or business address is 3655 Memory Lane, South Lake Tahoe, CA 96150-4137. My electronic service address is **mbarnes@terrecon.net**.
2. I served a copy of *MOTION TO AUGMENT RECORD ON APPEAL; MEMORANDUM; DECLARATION OF DARIO NAVARRO; EXHIBITS; PROPOSED ORDER* on the persons at addresses listed in items 4, 5, 6 and 7:
 - BY FIRST-CLASS MAIL:** I enclosed said document in a sealed addressed envelope and deposited the sealed envelope containing said document with the United States Postal Service with first-class postage fully prepaid at a United States Post Office in **Diamond Springs, California**; and
 - BY ELECTRONIC MAIL:** I electronically served a true and correct courtesy copy of said document to said persons via electronic mail to the email addresses listed in item 7.
3. Said document was placed in the mail:
 - a. on *(date)*: **March 29, 2021**
 - b. at *(City and State)*: **Diamond Springs, California**
4. The envelopes were addressed and mailed as follows to counsel of record for the Defendant-Appellant Coyote Valley Band of Pomo Indians (“Defendant-Appellant”):

Little Fawn Boland, Esq.
Ceiba Legal, LLP
35 Miller Avenue, No. 143
Mill Valley, CA 94941

Glenn W. Peterson, Esq.
Peterson Watts Law Group, LLP
2267 Lava Ridge Court, Suite 210
Roseville, CA 95661

Keith Anderson, Esq.
Ceiba Legal, LLP
35 Madrone Park Circle
Mill Valley, CA 94941

5. An additional copy of said document was addressed and mailed to the following attorney, representing the Coyote Economic Development Corporation ("CEDCO") and Coyote Valley Entertainment Enterprises ("CVEE") in this case:

Sara Dutschke Setshwaelo, Esq.

Partner, Kaplan Kirsch & Rockwell, LLP
595 Pacific Avenue, 4th Floor
San Francisco, CA 94133

6. I enclosed said document in a sealed addressed envelope and deposited the sealed envelope containing said document with the United States Postal Service with first-class postage fully prepaid at a United States Post Office in **Diamond Springs, California** to the Honorable Ann C. Moorman, Presiding Judge, Mendocino County Superior Court:

Honorable Ann C. Moorman

c/o Superior Court Clerk
100 North State Street
Ukiah, CA 95482

7. Electronic service address of each person served:

Little Fawn Boland, Esq.

Email: littlefawn@ceibalegal.com

Keith Anderson, Esq.

Email: keith@ceibalegal.com and attorneykeithanderson@gmail.com

Glenn W. Peterson, Esq.

Email: gpeterson@petersonwatts.com

Sara Dutschke Setshwaelo, Esq.

Email: ssetshwaelo@kaplankirsch.com

Honorable Ann C. Moorman

Email: DepartmentG@mendocino.courts.ca.gov

On (date): **March 29, 2021** at (time): 4:12 a.m. p.m.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in **Placerville, California** on the date indicated below:

Date: March 29, 2021



Margaret Barnes