A158171
A158172
A158173

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. SCUK-CVG-12-59929
THE HONORABLE ANN C. MOORMAN

RESPONDENT'S BRIEF

DARIO NAVARRO (STATE BAR NO. 102575)
LAW OFFICE OF DARIO NAVARRO
3655 Memory Lane
South Lake Tahoe, CA 96150-4137
TEL (619) 751-7189 FAX (619) 374-7147
Email: navdar@gmail.com

Attorney for Plaintiff and Respondent ROBERT FINDLETON

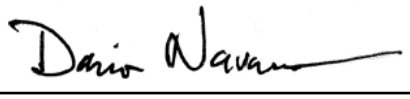
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no interested entities or persons that must be listed in this certificate under rule 8.208(e)(3). (Cal. Rules of Court, rule 8.208, subd. (e)(3).)

Dated: November 16, 2020

Respectfully submitted,

LAW OFFICE OF DARIO NAVARRO

By: 

DARIO NAVARRO
Attorney for Plaintiff and Respondent Robert Findleton

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Cases Continued **Page**

Cases Continued **Page**

Cases Continued **Page**

Cases Continued **Page**

Cases Continued **Page**

Statutes, Rules of Court, Ordinances and Constitutional Provisions

Other Authorities

Other Authorities Continued

INTRODUCTION

This appeal has been frivolously taken from three *interlocutory* orders, all of which are nonappealable, without any argument whatsoever or any citation to case law in the Opening Brief explaining why they should be treated as appealable other than the single sentence in the Statement of Appealability that the appeal is authorized by Civil Procedure Code section 904.1(a)(1).[1] (OB 11)

Second, Defendant-Appellant Coyote Valley Band of Pomo Indians ("Tribe") has inexcusably omitted from its Statement of the Case, Statement of the Facts and *all subsequent arguments* throughout its Opening Brief (OB 1-52) any reference whatsoever to **(1)** the trial court's extensive evidentiary rulings made after written objection and oral argument at the omnibus hearing held on April 26, 2019 (3RT 110-245),[2] and **(2)** the resulting exclusion from evidence of many unproven factual allegations that the Tribe has improperly presented in its Statement of the Facts and throughout its brief, thereby leaving its appeal fatally bereft of any judicially cognizable factual foundation.[3] (OB 10-24.) The resulting Statement of the Case, Statement of the Facts and *all subsequent arguments* are so incorrigibly tainted by the Tribe's flagrantly incomplete, misleading and biased presentation of the case that the Tribe must be deemed to have waived any "contention that the findings are not supported by substantial evidence."[4]

---

1. Code Civ. Proc., § 904.1, subd. (a)(1). All references in the main text of this brief to statutory code provisions shall refer to sections of the California Code of Civil Procedure, unless otherwise specified.
2. The Trial Court's evidentiary rulings have been summarized for ease of reference in the attached **"Appendix A: Chart of Evidentiary Rulings by Trial Court"** [hereinafter referred to as "Appendix A"].
3. See texts and authorities cited, *infra,* at pp. 15, 16, 18-19, 28-29, 30-32.
4. See texts and authorities cited, *infra,* at pp. 15, 16, 18-19, 28-29, 30-32.

(*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738 ["*Schmidlin*"]; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2018) § 9:27, p. 9-8 ["*Eisenberg*"].)

Third, the Tribe has egregiously mischaracterized the two prior published appellate opinions in this case, *Findleton I*[5] and *Findleton II,*[6] throughout its Opening Brief (OB 1-52) as holding *only* that the Tribe had expressly waived its sovereign immunity and *not* that the Mendocino Superior Court had clear jurisdiction on remand for further proceedings in the case (OB 11, ¶ 2; 12, ¶ 1) in order to give a deceptive patina of legitimacy to the Tribe's pretense that the question of the superior court's jurisdiction to enforce Findleton's right to arbitrate had not been not addressed in the 2016 *Findleton I* decision, thereby resulting in the Tribe's inexcusably false and misleading claims that it was free in 2017 to (1) file in the Coyote Valley Tribal Court ("CVTC") for injunctive relief on an issue that supposedly had not yet been definitively decided in state court proceedings,[7] and (2) assert to the American Arbitration Association ("AAA") that no court of competent jurisdiction had yet been ascertained in the state court proceedings to enforce the arbitration agreement.[8] (*Findleton I,* 1 Cal.App.5th at pp. 1217, 1218 [expressly holding that the "waiver extended to judicial enforcement of right

5. *Findleton v. Coyote Valley Band of Pomo Indians* (2016) 1 Cal.App.5th 1194 ["*Findleton I"*].
6. *Findleton v. Coyote Valley Band of Pomo Indians* (2018) 27 Cal.App.5th 565 [*"Findleton II"*].
7. Motion for Temporary Restraining Order and Preliminary Injunction (CVTC, No. 2017-01103-CO, Sept. 15, 2017) p. 4, fn. 2 [falsely asserting that "no court has the authority to compel the parties to arbitrate"] (5CT 1219, fn. 2).
8. Michael Hunter, Chairperson, Coyote Valley Band of Pomo Indians, letter to Cristina Ryan, Director ADR Services, American Arbitration Association, Sept. 13, 2017, p. 1, ¶¶ 3-4; p. 2, ¶ 1 (5CT 1204-1205.)

to arbitrate" and remanding "the case to the superior court for further proceedings consistent with this opinion"]; *Findleton II,* 27 Cal.App.5th at pp. 567, 571-572 [expressly holding that the law of the case from *Findleton I* bars any claim that the state court lacks jurisdiction because the case was "remanded . . . to the superior court for further proceedings"].)

STATEMENT OF THE CASE

Since the Tribe's Statement of the Case is incomplete and erroneous, Findleton supplements the Tribe's stated procedural history as follows:

A. Three Nonappealable Interlocutory Orders

This is a frivolous and unmeritorious appeal from the following three *nonappealable interlocutory orders* of the Mendocino Superior Court:

(1) Order Denying Defendant's Motion for Clarification (filed Apr. 26, 2019; Notice of Entry of Order filed May 7, 2019) (8CT 2390-2394) (Notice of Appeal filed June 25, 2019) (9CT 2602) ["Order Denying Clarification"];

(2) Order Denying Defendant's Motion for Exemption from Enforcement of a Money Judgment (filed Apr. 26, 2019; Notice of Entry of Order filed May 7, 2019) (8CT 2385-2389) (Notice of Appeal filed June 25, 2019) (9CT 2603) ["Order Denying Exemption"]; and

(3) Order Granting Plaintiff's Motion for an Order Requiring Undertaking to Stay Execution on Order Awarding Sanctions and Motion for Order Directing Issuance of Writ of Execution (filed Apr. 29, 2019; Notice of Entry of Order filed May 8, 2019) (9CT 2396-2401) (Notice of Appeal filed June 25, 2019) (9CT 2604) ["Order Requiring Undertaking"].

B. Corrections to Tribe's Misleading Statement of the Case

The Tribe has inexcusably omitted or misrepresented the following crucial procedural events and information in its Opening Brief:

(1) The Tribe omitted any reference to:

(a) the trial court's extensive evidentiary rulings made after written objection and oral argument at the omnibus hearing held on April 26, 2019 (3RT 110-245; Appendix A); and

(b) the resulting exclusion from evidence of purported facts that the Tribe has improperly presented in its Statement of Facts (OB 11-24), especially those pertaining to its motives for the inequitable, secret transfer of all casino assets on November 16, 2017 to Coyote Valley Entertainment Enterprises ("CVEE"), a corporation formed under tribal law and wholly owned and controlled by Coyote Economic Development Corporation ("CEDCO"), a federally chartered tribal corporation. (3RT 168–3RT 219; see Appendix A for a summary of the rulings.)

(2) The Tribe has omitted two crucial procedural events and their related dates from its timeline (OB 10-24):

(a) this Court's *final determination* in *Findleton I* on July 29, 2016 of the issue of the Tribe's express waiver of sovereign immunity *and* the state court's continuing jurisdiction to enforce the arbitration agreement, well over five months before the Tribe began improper forum shopping with its lawsuit[9] in the Northern California Intertribal Court System

9. *Findleton v. Coyote Valley Band of Pomo Indians* (NCICS Jan. 20, 2017) No. NCICS-CV-2017-0001-JW (5Ct 1331-1332).

("NCICS") on January 20, 2017 (*Findleton I*, 1 Cal.App.5th at pp. 1217, 1218); and

(b) the California Supreme Court's *final determination* of the Tribe's failed appeal of the Order to Compel Arbitration[10] on August 28, 2017 (6CT 1519, ¶ 3), which occurred only 19 days prior to the commencement of a second forum shopping lawsuit[11] on September 15, 2017 (6CT 1520:6-9, ¶ 1) in a putative Coyote Valley Tribal Court ("CVTC") or shortly thereafter secretly transferred from NCICS to CVTC on or around November 8, 2017 (9CT 2553) in violation of the binding principles of collateral estoppel.

STATEMENT OF APPEALABILITY

This is an appeal from three orders of the Mendocino Superior Court, all of which are nonfinal, interlocutory and nonappealable under Section 904.1(a)(1). (Code Civ. Proc., § 904.1, subd. (a)(1).) Respondent expressly contests that any of the three orders are appealable under Section 904.1(a)(1).

STATEMENT OF FACTS

Since all of the following allegations of unproven facts were expressly excluded from evidence by the rulings of the trial court after written objection and oral argument at a lengthy hearing on April 26, 2019 (3RT 110 – 245),

---

10. Order on Hearing after Motion to Compel Mediation and Arbitration (signed Apr. 24, 2017; filed Apr. 25, 2017) ["Order to Compel Arbitration"] (4Ct 1137-1139).

11. *Coyote Valley Band of Pomo Indians v. the American Arbitration Association and Robert Findleton* (Sept. 15, 2017) Case No. CV-2017-01103-CO (6CT 1520:6-9, ¶ 1 [Sanctions Order finding that "the Tribe filed a petition in its tribal court to seek and obtain a ruling contrary to this Court's order compelling . . . arbitration, aimed expressly to enjoin AAA from proceeding with the . . . arbitration"].)

This Court must disregard them[12] wherever they are presented in the Statement of Facts or elsewhere in the Opening Brief:

(1) the motives animating the Tribe's inequitable, secret transfer of all the "casino assets" from the Tribe to CVEE on November 16, 2017 (OB 10-24) (Appendix A, Evidentiary Ruling Nos. 2-13);

(2) any reference to the New Market Tax Credit ("NMTC") program (OB 10-14, 16) (Appendix A, Evidentiary Ruling Nos. 2-13); and

(3) the substantive content, especially excluded paragraphs 4-7 (6CT 2234-2235), of the April 18, 2019 Declaration of Michael Hunter; and

(4) such other unproven allegations of facts that have been ruled inadmissible as tabulated in Appendix A at Evidentiary Rulings Nos. 1-29.

ARGUMENT

STANDARD OF REVIEW AND SCOPE OF APPEAL

The statement of the relevant standard of review in the Tribe's Opening Brief is both inaccurate and incomplete. (OB 24.)

A. Standard of Review for Appealability.

The issue of appealability of the three orders depends on a jurisdictional construction of Section 904.1(a)(1) and is, therefore, reviewed de novo. (Code Civ. Proc., § 904.1, subd. (a)(1); *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696; *County of San Diego v. Arzaga* (2007) 152 Cal.App.4th 1336, 1343.)

12. *McCoy v. Pacific Maritime Assn.* (2013) 216 Cal.App.4th 283, 294, fn. 2 [holding failure to appeal evidentiary rulings requires disregard of excluded evidence on appeal].

B. Mixed Standard of Review for Estoppel.

The question whether there is sufficient evidence to justify a finding of estoppel is reviewed under the deferential substantial evidence rule. (*Holdgrafer v. Unocal Corp.* (2008) 160 Cal.App.4th 907, 925-926 ["*Holdgrafer*"]; *Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 155 ["*Hoopes*"].) The issues of which law of estoppel applies, state or federal or both, and the legal requirements of estoppel are questions of law reviewed de novo. (*Blix Street Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, 46-47.)

C. Questions of Sufficiency of Evidence.

On any appeal where the sufficiency of the evidence is in question, an appellate court is guided by the deferential *substantial evidence rule*: the trial court's resolution of disputed factual issues must be affirmed so long as supported by "substantial" evidence. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632 ["*Winograd*']; *Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1188 ["*Wilson*"]; *Whiteley v. Philip Morris Inc.* (2004) 117 Cal.App.4th 635, 678 ["*Whiteley*"].)

D. Omissions and Mischaracterizations of Adverse Facts.

The Tribe had a legal obligation to summarize fairly, accurately, and objectively the facts of the case and proceedings below free of bias in its Statement of the Case and Statement of Facts. (*Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1531; Cal. Rules of Court, rule 8.204, subd. (a)(2)(C); Eisenberg, § 9:27, p. 9-8.) The Tribe's Statement of the Case and the Statement of the Facts are so flagrantly biased, misleading and incomplete that the Tribe must be deemed to have waived any "contention that the findings are not supported by substantial evidence." (*Schmidlin v.*

City of Palo Alto (2007) 157 Cal.App.4th 728, 738; *Eisenberg,* § 9:27, p. 9-8.)

E. Presumptions in Favor of Judgment.

The most fundamental rule of appellate law is that the order or judgment challenged on appeal is presumed correct. (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383; *Cahill v. San Diego Gas & Elec. Co.* (2011) 194 Cal.App.4th 939, 956.)

I. THE ORDER DENYING CLARIFICATION MUST BE AFFIRMED BECAUSE THE TRIBE'S AMENDED MOTION FOR CLARIFICATION ("AMC") WAS UNSUPPORTED BY THE FACTS AND LACKS ANY BASIS IN LAW.

A. The deferential abuse of discretion standard of review applies.

The abuse of discretion standard applies where the trial court issues an order in a context in which it has been vested with discretionary authority over the subject matter of the order, such as when ruling on the admissibility of evidence or exercising control over the processes of the court. (Code Civ. Proc., § 187; *People v. Waidla* (2000) 22 Cal.4th 690, 713 [voir dire], 717-718 [admissibility of evidence]; *In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 299-300 [sealing orders].) As the Tribe itself concedes (OB 46:1) and the trial court found (8CT 2366:5-6), the Tribe's frivolous Amended Motion for Clarification ("AMC") *lacks any basis in statutory authority whatsoever*. The trial court's willingness to entertain a so-called "motion for clarification," unauthorized by any statute, was an act of discretion authorized by the trial court's inherent power to control its own proceedings. (Code Civ. Proc., § 187.) Thus, the deferential abuse of discretion standard governs appellate review of the Order Denying Clarification. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

B. The findings supporting the Order Denying Clarification are all well-founded and more than sufficient to justify denial of the frivolous AMC.

The April 26, 2019 Order Denying Clarification (8CT 2365-2366) contains three express findings supporting the trial court's conclusion that the Tribe failed to show good cause. **First,** the trial court found that the four "challenged orders . . . require no additional interpretation with respect to the words "Casino assets." (8CT 2366:3-4) **Second**, the trial court found that "any challenge to the subject matter jurisdiction of such orders is premature and lacking grounds in any statutory authority." (8CT 2366:4-6) **Third,** the trial court found that "in pursuing recourse against 'Casino assets' Plaintiff may question Defendant, CEDCO, CVEE or any of their . . . agents and undertake such investigation as may be permitted by applicable law during the course of the debtor's examination concerning any asset that was held in an account of the Defendant's casino business during the term of the contract between the parties or any asset traceable to such account regardless of the party to whom or the account to which it was transferred." (8CT 2366:7-13) All three findings are amply justified by the record and applicable law.

The Order was issued in response to the Tribe's AMC, which requested the trial court *not just to clarify but actually amend* four previous orders of the court, one of which was then on appeal.[13] Although phrased as a request

13. The Tribe requested in the AMC the amendment of the following four previously filed orders:
    (1) March 5, 2019 order declaring the Plaintiff the prevailing party and awarding attorney fees and costs (7CT 1856-1857);
    (2) March 14, 2019 order granting attorney fees and costs on appeal (7CT 1886-1887);

for "clarification," the Tribe's AMC sought the outright revision of four prior court orders by inserting the unnecessary phrase "recourse is limited to casino assets" at some unspecified place in their respective texts. (7CT 1899:10-11) This limitation, however, was already apparent on the face of the original waiver of tribal sovereign immunity (1CT 258, ¶ 6 [T.C. Res. CV-08-20-08-03]; 2CT 371, ¶2 [G.C. Res. 07-01]; 4CT 961, ¶ 2 [G.C. 08-01; superseding G.C. Res. 07-01]), which was an integral part of the contract between the Tribe and Findleton. Further, as even the Tribe expressly concedes (OB 46, ¶2), the limitation on recourse to casino assets has been the unequivocal law of the case since determined by this Court in its 2016 published opinion in *Findleton I.* (1 Cal.App.5th at p. 198, fn. 2, 1202, 1205-1206, 1217.) The limitation was also made obviously mandatory in the trial court's prior February 21, 2017 demurrer ruling (4CT 953-967, at 955, ¶ 3), which even attached, incorporated and implemented the two controlling tribal resolutions that limited recourse to "casino assets," as the Tribe itself acknowledged in its AMC and OB. (7CT 1899; 4CT 954-967; OB 46)

Obviously, not every order issued by the trial court must repeat and incorporate every past order or law of the case, which are obviously binding without any such repetition. (*Stoltenberg v. Ampton Investments, Inc.* (2013) 215 Cal.App.4th 1225, 1231; *Stone v. Bach* (1978) 80 Cal.App.3d 442, 448.) Thus, the requested "*clarification*" *was completely unnecessary* as both the Court and Findleton recognized as binding such a limitation on actual

---

(3) December 10, 2018 order granting sanctions (appeal then pending in Appeal No. A156459) (6CT 1219-1225); and

(4) November 4, 2016 order granting attorney fees and costs on appeal (7CT 1913-1914) (underlying motion for attorney fees and costs was unopposed by the Tribe; right to appeal waived) (7CT 1913)

recourse and collection. Without more, the AMC was frivolous on its face. So, why did the Tribe pursue such a seemingly pointless motion?

The short answer is that the record clearly reveals the Tribe was trying to obstruct and delay the first scheduled debtor's examination. As the AMC and the accompanying March 13, 2019 Ex Parte Application for Order Shortening Time ("EPA") (7CT 1870-1873) reveal, the Tribe bizarrely believed that if the trial court granted its request to revise the four orders to add the proposed language, "recourse is limited to casino assets," the Tribe could somehow prevent Findleton from asking questions about non-casino assets at the debtor's examination. (7CT 1872:19-24) The Tribe frivolously argued in a supporting one-and-a-half-page memorandum devoid of a single citation to a court decision, without any supporting declaration or other evidence, that by *merely posing questions* about non-casino assets to the Tribe, CEDCO, and CVEE, Findleton would somehow cause the Tribe to suffer "great and irreparable injury." (7CT 1872:19:24 [arguing without any supporting declaration that the Tribe would suffer "great and irreparable injury" if the trial court did not rule on the Tribe's motion for clarification to prevent Findleton from asking at the "Debtor's Examination . . . questions involving assets to which Mr. Findleton does not have recourse by law and by contract."]; 2RT 44:20-28; 3RT 142:17-25, 143:1-16)

While Findleton has always been willing to acknowledge that his actual recourse is limited to casino assets, he has never agreed with the Tribe that such a limitation on *recourse* in any way limited the *scope of inquiry in a debtor's examination* for the obvious reason that "casino assets" can be easily transferred to non-casino accounts to hide such assets and defraud the judgment creditor. This is a common technique used to evade collection as the case law makes clear. (*Berger v. Varum* (2019) 35 Cal.App.5th 1013,

1017 [discussing "various mechanisms to hide the amount and ownership" of "assets . . . through [the use of] corporate entities, asset purchase agreements, conveyances, and asset transfers without consideration"].)

If a judgment creditor such as Findleton were prohibited from asking questions about non-casino assets at a debtor's examination, all that an unscrupulous judgment debtor would have to do to evade collection would be to convey a casino asset to a non-casino account. The Tribe apparently sought to add the surplusage limiting "recourse" to "casino assets" to the four orders as part of a scheme to prohibit Findleton from asking any questions about non-casino assets, a result completely at odds with "the purpose of a judgment debtor examination" to "leave no stone unturned in the search for assets which might be used to satisfy the judgment." (*Yolanda's, Inc. v. Kahl & Goveia Commercial Real Estate* (2017) 11 Cal.App.5th 509, 515 [internal quotation marks omitted] ["*Yolanda's*"], quoting *Troy v. Superior Court* (1986) 186 Cal.App.3d 1006, 1014; 7CT 1872:19:24)

The AMC, however, has been the subject of continuing contradictory and incoherent characterizations by the Tribe. As recently as July 7, 2020, the Tribe formally took the legal position before this Court that the AMC had "sought additional interpretation of the term 'Casino assets' in the context of the Court's money judgments for the purpose of setting the parameters of permissible execution and recourse." (Memorandum of Points and Authorities in Support of Motion to Consolidate Appeals, p. 4, ¶ 3; Supporting Declaration of Keith A. Anderson, p. 4, ¶ 4 [same].) In its Opening Brief of June 22, 2020, however, the Tribe took precisely the opposite position with the contradictory claim that the "Tribe did not request the Court in any way, shape or form to engage in an analysis of what the words 'casino assets' mean." (OB 44) The contradictions do not end there.

In the AMC itself, the Tribe eschews both of these characterizations with the following inscrutable assertion:

> This is ***not [a] motion to clarify*** or correct an order under **California Code of Civil Procedure § 1008**, or § 473. This is a motion ***challenging the subject matter jurisdiction of this Court*** to enforce orders over assets that exceed the limited scope of the Tribe's waiver of sovereign immunity.

(4CT 1900, fn. 2 [emphasis added]) In its Opening Brief, the Tribe even contradicts this position with the claim that the AMC was really a "motion for reconsideration" under Section 1008(e) in disguise. (OB 46, ¶ 1) In short, the Tribe has not advanced in this appeal any consistent, coherent legal theory challenging the Order Denying Clarification, which must be affirmed in the absence of any cogent legal argument from the Tribe to the contrary.

Clarification of Meaning of "Casino Assets." As Findleton argued below and the trial court found, the terms "casino assets" are well understood in the Indian gaming industry and required no further elaboration from the trial court. (7CT 2088-2089; see, e.g., 25 C.F.R. § 542.19 [minimum internal control standards for casino asset accounting required by Tribe's state gaming compact].) The trial court did not abuse its discretion in declining to add the redundant, unnecessary language requested by the Tribe or further construe the meaning of "casino assets." (*People v. Preyer* (1985) 164 Cal.App.3d 568, 573.)

Frivolous Challenge to Subject Matter Jurisdiction. The trial court's findings that "any challenge to the subject matter jurisdiction of such orders is **[i]** premature and **[ii]** lacking grounds in any statutory authority" is factually and legally well-justified and provide compelling grounds for affirming the Order Denying Clarification. (8CT 2366:4-6)

The record clearly supports the trial court's finding that the AMC was "premature." By finding the AMC "premature," the trial court was likely referring to the fact when the AMC was filed on March 13, 2019 (7CT 1867-1869), the Tribe had not offered any declaration or other evidence whatsoever that by *merely posing questions* about non-casino assets to the Tribe, CEDCO, and CVEE, Findleton would somehow cause the Tribe to suffer "great and irreparable injury." (7CT 1872:19:24) There was a complete failure of proof and, therefore, no evidentiary foundation whatsoever for the AMC.[14]

The AMC was also "premature" in the sense that no attempt had been made by Findleton to seek recourse against non-casino assets of the Tribe nor did the Tribe present any evidence whatsoever that Findleton had any intention to seek recourse against such non-casino assets. Further, since CVEE, the wholly owned tribal corporation to which the Tribe had inequitably and secretly conveyed all the casino assets on or around November 16, 2017: **(1)** had not been subject to any legal process in the trial court, **(2)** had at that time made no appearance in the trial court proceedings and was not then a party, and **(3)** was not even represented by the Tribe's legal counsel then appearing, the issue of any alleged sovereign immunity of tribal entity was not ripe for review. (7CT 2092-2093) Indeed, as non-parties, CVEE and its parent, CEDCO, had absolutely no standing to raise any argument on appeal. (*County of Alameda v. Carleson* (1971) 5 Cal.3d

14. Most of the putative evidence the Tribe offered in support of its AMC in the form of supporting declarations was excluded as inadmissible hearsay, improper opinion testimony or subject to the best evidence rule. (Evid. Code §§ 800-803 [opinion testimony]; 1200, *et seq.* [hearsay]; 1523 [best evidence rule].) (3RT 168 – 3RT 219; see Appendix A for a summary of the rulings.)

730, 736 [holding that only "parties of record" in the trial court action have standing to appeal]; *In re Miguel E.* (2004) 120 Cal.App.4th 521, 539 [same]; Code Civ. Proc., § 902.) All intendments and presumptions are indulged to support the challenged order on matters as to which the record is silent.[15] (*Jade Fashion & Co., Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 644.) Further, this Court is required to "uphold" the trial court "ruling if it is correct on any basis, regardless of whether such basis was actually invoked." (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32; *Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329.) The finding that the frivolous AMC was "premature" must be affirmed.

The Tribe concedes that the trial court's finding that the challenge to the subject matter jurisdiction of the trial court lacked any statutory basis in a self-styled motion for clarification. (OB 46:1) Despite this concession that there is no statutory basis for its AMC, the Tribe's argues *for the first time on appeal* that the AMC was actually a "motion for reconsideration" under Section 1008(e) even though the AMC expressly declared it was not a motion under Section 1008. (OB 45, ¶ 1; 4CT 1900, fn. 2) First, since that argument was never argued below and was, in fact, expressly eschewed by the Tribe, the argument was waived and may not be argued on appeal. (*Nellie Gail Ranch Owners Assn. v. McMullin* (2016) 4 Cal.App.5th 982, 997; *Bardis v. Oates* (2004) 119 Cal.App.4th 1, 13-14, fn. 6 ["*Nellie*"]; *Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1519; *Eisenber*g, § 8-229, p. 8-172.) Second, the Tribe is judicially estopped to change its position on appeal. "The doctrine of judicial estoppel precludes a party from taking inconsistent

15. Respondent is free to urge affirmance of the judgment on grounds other than those cited by the trial court. (*Little v. Los Angeles County Assessment Appeals Boards* (2007) 155 Cal.App.4th 915, 925, fn. 6.)

positions in judicial . . . proceedings." (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 187, quoting *Claxton v. Waters* (2004) 34 Cal.4th 367, 379, fn. 3; Jackson v. County of Los Angeles (1997) 60 Cal.App.4th 171, 181-184; *Rissetto v. Plumbers & Steamfitters Local* (9th Cir. 1996) 343, 94 F.3d 597, 605, citing *Milgard Tempering, Inc. v. Selas Corp. of America* (9th Cir.1990) 902 F.2d 703, 716; *Stevens Tech. Serv. v. SS Brooklyn,* 885 F.2d 584, 589 (9th Cir. 1989.) Third, the Tribe is precluded by the law of the case to relitigate the issue of subject matter jurisdiction *yet again,* as this Court has already determined that the Tribe has expressly waived sovereign immunity as a matter of tribal law and thereby conferred jurisdiction on the trial court to enforce the arbitration agreement. (*Findleton I,* 1 Cal.App.5th at pp. 1217, 1218; *Findleton II,* 27 Cal.App.5th at pp. 567, 571-572.) Thus, the second finding of the Order Denying Clarification must be affirmed as well-grounded in the law and facts.

Finally, the trial court in the Order Denying Clarification addressed the subject raised by the Tribe concerning to whom Findleton could pose questions at a debtor's examination. The trial court saw that there was no "great and irreparable injury" (7CT 1872:19:24) suffered by the Tribe if Findleton were allowed to ask CEDCO and CVEE or their agents about non-casino assets and, even more importantly, the Tribe never offered a shred of evidence to substantiate such injury in the AMC or EPA. Thus, the trial court found that such non-casino questions were permissible (8CT 2366:7-13), especially in light of the equitable estoppel to which the Tribe had been found subject in both the Order Denying Exemption and Order Granting Undertaking. (8CT 2363:3-4;8CT 2381-23-84) Thus, all the findings, both factual and legal, must be affirmed as correct. Substantial evidence supported the finding of estoppel and the court's order allowing routine

questioning was well-grounded is settled law. (*Holdgrafer,* 160 Cal.App.4th at p. 925-926; *Schmidlin,* 157 Cal.App.4th at p. 738**;** *Yolanda's,* 11 Cal.App.5th at p. 515.)

II. THE ORDER DENYING EXEMPTION MUST BE AFFIRMED BECAUSE THE TRIBE'S MOTION FOR EXEMPTION ("MFE") WAS UNSUPPORTED BY THE FACTS AND LACKS ANY LEGAL BASIS.

A. The deferential substantial evidence standard applies.

On any appeal where the sufficiency of the evidence is in question, an appellate court is guided by the deferential *substantial evidence rule*: the trial court's resolution of disputed factual issues must be affirmed so long as supported by "substantial" evidence. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632; *Wilson,* 169 Cal.App.4th at p. 1188.) Any appellant challenging the trial court's finding concerning the sufficiency of evidence faces a "daunting burden." (*Whiteley,* 117 Cal.App.4th at p. 678 [internal quotes omitted].) This is because the "substantial evidence standard of review is generally considered the most difficult standard of review" for the appellant "to meet, as it should be, because it is not the function of the reviewing court to determine the facts." (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589.)

That "daunting burden" is rendered all but impossible here because of the conspicuous failure of the Tribe to even mentioned the myriad adverse evidentiary rulings that excluded the very evidence it so improperly invokes in its Statement of the Case, Statements of Facts and throughout the Opening Brief. (OB 10-24) The inexcusable omission of the trial court's April 26, 2019 evidentiary rulings, carefully tabulated in Appendix A, gives rise to an unavoidable presumed waiver of the "contention that the findings are not

supported by substantial evidence." (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738; *Eisenberg*, § 9:27, p. 9-8.) Finally, it is well established that trial court determinations of equitable estoppel are also governed by the substantial evidence rule. (*Holdgrafer,* 160 Cal.App.4th at p. 925-926; *Hoopes,* 168 Cal.App.4th at p. 155). The Tribe is incorrect in claiming that the de novo standard applies here. (OB 24)

As long as there is "substantial evidence" to support the trial court's finding, the appellate court *must affirm* even if the reviewing justices personally would have ruled differently had they presided over the proceedings below and even if other substantial evidence would have supported a different result. (*Schmidt v. Superior Court,* (2020) 44 Cal.App.5th 570, 582; *Eisenberg,* § 8:39 – 8:81, pp. 8-19 – 8-40.)

B. The findings supporting the Order Denying Exemption are all well-founded and more than sufficient to justify denial of the frivolous Motion for Exemption ("MFE").

The April 26, 2019 Order Denying Exemption (8CT 2362-2364) contains two express findings supporting the trial court's conclusion that the Tribe failed to show good cause for its frivolous exemption claim. **First,** the trial court found that the Motion for Exemption ("MFE") lacked "any cognizable evidentiary foundation." (8CT 2362:1-3) **Second,** the trial court found that the Tribe's claims in its Motion for Exemption from Enforcement of a Money Judgment ("MFE") (6CT 1642-1659) were "subject to equitable estoppel under federal common law to prevent an injustice." (8CT 2363:1-4)

1. The MFE lacked any cognizable evidentiary foundation.

Failure to Appeal April 26, 2019 Evidentiary Rulings. As a result of Findleton's comprehensive written evidentiary objections[16] to the Tribe's three testimonial declarations[17] offered in support of the February 11, 2019 Motion for Exemption from Enforcement of a Money Judgment ("MFE") (6CT 1642-1659), a majority of the allegations forming the supposed factual basis of the specious exemption claim in the MFE were *denied admission into evidence*. (3RT 168–3RT 219; see Appendix A for a summary of the rulings.) The Tribe has conspicuously failed to appeal *any* of the evidentiary rulings sustaining Findleton's objections in its Opening Brief with the result that such excluded evidence must be disregarded on appeal. (*McCoy v. Pacific Maritime Assn.* (2013) 216 Cal.App.4th 283, 294, fn. 2 [holding failure to appeal evidentiary rulings requires disregard of excluded evidence on appeal].)

Failure to Object to Rulings or Mention Hearing. The Tribe even failed to object to the evidentiary rulings at the April 26, 2019 hearing,

16. Findleton's Evidentiary Objections to Affidavit of Ghazal Mahdavian in Support of MFE (Apr. 11, 2019)(8CT 2101-2115) ["Mahdavian Objections"]; Findleton's Evidentiary Objections to Defendant's Request for Judicial Notice (Apr. 11, 2019) (8CT 2263-2273) ["RJN Objections"]; Findleton's Evidentiary Objections to Declaration of Little Fawn Boland of April 18, 2019 in Support of Defendant's Reply Papers (served and submitted to the trial court Apr. 25, 2019; late filed Apr. 29, 2019) (8CT 2274-2308) ["Boland Objections"]; Findleton's Amended Evidentiary Objections to Declaration of Keith Anderson in Support of Defendant's Reply Papers (Apr. 26, 2019) (8CT 2318-2327) ["Anderson Objections"].

17. Ghazal Mahdavian provided the main affidavit in support of the MFE. (6CT 1662-1721) The Tribe's counsel of record, Little Fawn Boland and Keith Anderson, provided belated declarations in reply to Findleton's opposition. (8CT 2116-2119 [Boland]; 8CT 2204-2225 [Anderson])

thereby waiving any claim to admissibility on appeal. (*Clark v. Optical Coating Lab* (2008) 165 Cal.App.4th 150, 174.) Incredibly, the Tribe *even failed to mention* in its Opening Brief the lengthy hearing held on April 26, 2019 in the trial court on Findleton's written evidentiary objections that resulted in the exclusion of a majority of the evidence that formed the foundation for the Tribe's MFE and this frivolous appeal. (3RT 168–3RT 219; see Appendix A for a summary of the rulings; OB 1-53) The complete omission of any reference to the hearing in the Opening Brief so egregiously biased the Tribe's presentation of the case that the Tribe must be deemed to have waived any "contention that the findings are not supported by substantial evidence." (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738; *Eisenberg*, § 9:27, p. 9-8.)

Without any evidentiary support for the exemption claim, the Tribe failed to satisfy the statutory requirement specified in Section 708.120(d) for "an affidavit in support of the application" for exemption that contained the specific information mandated by Section 703.520(b). (Code Civ. Proc., §§ 708.120, subd. (d); 703.520, subd. (b).) Among the required content *missing* from the February 11, 2019 Affidavit of Ghazal Mahdavian ["*Mahdavian Affidavit*"] (6CT 1662-1721) after most of its allegations were excluded from evidence[18] was **(1)** a complete description of "the property claimed to be exempt" as required by Section 703.520(b)(3), and **(2)** a "statement of the

18. As Appendix A describes in greater detail in Evidentiary Rulings Nos. 3-13 with complete cross-references to the specific rulings in the RT, the trial court excluded from evidence the following provisions of the Mahdavian Affidavit in their entirety: paragraphs 7-11 and 12:12-18 (6CT 1663:7-1664:11, 1664:12-18), 15-16 (6CT 1664:21-1665:3), 18-19 (6CT 1665:10-15). The trial court sustained in part and overruled in part Findleton's evidentiary objections to paragraphs 12:12 and 20 (6CT 1664:12, 1665:16-19).

facts necessary to support the claim" as required by Section 703.520(b)(6). Following the April 26, 2019 trial court's rulings excluding from evidence most of the content of the Mahdavian Affidavit, there was no factual foundation to support the Tribe's MFE under Sections 708.120(d) and 703.520(b). Consequently, the MFE suffered a complete failure of proof, which resulted in its well-justified denial. (8CT 2363:8)

No Legal Basis for Mistaken Exemption Claim. Not only was there no evidentiary basis for the exemption claim, neither was there any legal basis for exemption because the Tribe astonishingly failed to understand that Section 708.120 only authorizes the "judgment creditor," not the judgment debtor, to initiate the third party examination process by applying for an order compelling a third party to appear for an examination. (Code Civ. Proc., § 708.120, subd. (a); *Financial Holding Co. v. American Institute of Certified Tax Coaches, Inc.* (2018) 29 Cal.App.5th 663, 681; *Pekin v. Superior Court of San Diego County* (2013) 219 Cal.App.4th 1210, 1218; 6 Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2018) § 6:1280, pp. 6G-1–6G-2 ["*Ahart*"].)

Only after the judgment creditor has initiated a third party examination process under Sections 708.120(a)-(b) by personal service of the order to appear for examination on both the judgment debtor and the third party "[n]ot less than 10 days prior to the date set for the examination" is the judgment debtor then eligible to apply for exemption in a noticed motion "filed with the court and personally served on the judgment creditor not later than three days before the date set for the examination." (Code Civ. Proc., §§ 708.120, subds. (a)-(b); *Ahart,* at §6:1351, p. 6G-26.) The Tribe's claim under Section 708.120(d) (6CT 1644:9, 1663:3-4) is *unequivocally mistaken* as Section 708.120 only applies in the context of an examination of a third party by the

judgment creditor and no such third party examination process was even in existence when the MFE was filed on February 11, 2019. (*Ibid.*) The Tribe's misapplication of Section 708.120 rendered the MFE a *completely frivolous* and *embarrassingly nonsensical* filing. (*Ibid.,* at § 6:1296, p. 6G-8.)

Thus, under the substantial evidence rule, the trial court correctly found that the MFE lacked "any cognizable evidentiary foundation" and the Order Denying Exemption must be affirmed. (8CT 2362:1-3)

2. The federal common law of equitable estoppel applies.

The trial court was undoubtedly correct in finding that the Tribe's claims in its MFE (6CT 1642-1659) were "subject to equitable estoppel under federal common law to prevent an injustice." (8CT 2363:1-4)

First, the trial court correctly found that the federal common law of equitable estoppel applies. The question of whether a tribe may be equitably estopped after waiving tribal sovereign immunity is a federal issue because tribal sovereign immunity itself is a creature of "federal common law." (*Findleton I,* 1 Cal.App.5th at p. 1216, fn. 13 [applying federal common law to contract interpretation in this very case]; *Agua Caliente Band of Cahuilla Indians v. Superior Court* (2006) 40 Cal.4th 239, 259; Cohen's Handbook of Federal Indian Law (2012 ed.) *Sovereign Immunity,* § 7.05[1][a], p. 636 [explaining that the "[t]he doctrine of tribal sovereign immunity is rooted in federal common law and reflects the federal Constitution's treatment of Indian tribes as governments in the Indian commerce clause"].)

Further, since CVEE (6CT 1691-1701) is subject to the same legal limitations of its parent corporation (6CT 1696, art. IX, § 9.01), CEDCO, a federally charted tribal corporation under Section 17 of the Indian Reorganization Act of 1934, now codified at 25 U.S.C. § 5124 (formerly codified at 25 U.S.C. § 477) (6CT 1674-1690), the federal common law of

equitable estoppel undoubtedly applies to both. The official January 30, 2015 "Certificate of Approval" from the Bureau of Indian Affairs approves the new CEDCO charter with the express proviso that "nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law." (6CT 1674; 7CT 2067) Such a limitation clearly establishes that CEDCO is both subject to federal law and is not empowered to take any action contrary to federal law, which obviously subjects CEDCO and its wholly owned tribal subsidiary, CVEE, to the federal common law of equitable estoppel. (*Ibid.*) Further, as Findleton pointed out below, "Section 9.01 of CVEE's Enabling Charter subjects CVEE to the exact same legal limitations 'set forth in . . . the CEDCO Charter.'" (7CT 2067, ¶ 1; 6CT 1696, art. IX, § 9.01) Thus, CVEE, like CEDCO itself, is prohibited from abusing its charter by taking any action contrary to federal law, including the federal common law of equitable estoppel. (7CT 2067, ¶ 1) Further, 25 U.S.C. § 5124 itself limits the exercise of the powers conveyed to a tribal corporation to the "conduct of corporate business" that is "not inconsistent with law." (25 U.S.C. § 5124.) Thus, the trial court's well-justified reliance on the federal common law of equitable estoppel must be affirmed. (8CT 2363:1-4)

Second, the trial court's application of the federal common law of equitable estoppel was also well-supported by substantial evidence. (Declaration of Robert Findleton (Apr. 11, 2019), at ¶¶ 1-17, pp. 1-4; 7CT 2072-2075.) The Ninth Circuit's seminal decision in *Ellenburg* established the four federal common law elements[19] of equitable estoppel:

19. The California law of equitable estoppel is substantially identical to the federal common of law equitable estoppel, but parses the controlling criteria into five elements instead of four:

(1) the party to be estopped must know the facts;

(2) the party to be estopped intend that his conduct shall be acted on or must so act that the opposing party asserting the estoppel has a right to believe it is so intended;

(3) the party asserting the estoppel must be ignorant of the true facts; and

(4) the party asserting the estoppel must rely on the other party's conduct to his injury.

(*Ellenburg v. Brockway, Inc.* (9th Cir. 1985) 763 F.2d 1091, 1096 ["*Ellenburg*"]; *Greany v. Western Farm Bureau Life Ins. Co.* (9th Cir. 1992) 973 F.2d 812, 821 [same] ["*Greany*"].)

The four elements of federal common law equitable estoppel are easily satisfied by the evidence admitted without objection in the April 26, 2019 Findleton Declaration. **First,** the Tribe knew all of the facts relevant to the estoppel. (*Ellenburg,* 763 F.2d at p. 1096.) The Tribe knew that it was the owner in possession of all "casino assets" during the period from the waiver of tribal sovereign immunity, which included the limitation of recourse to "casino assets," on August 8, 2008 (1CT 258) until the illicit, secret transfer of all the casino assets on or around November 16, 2017. (3RT 188:8-19;

---

(1) a representation or concealment of material facts;
(2) made with knowledge, actual or virtual, of the facts;
(3) to a party ignorant, actually and permissibly, of the truth;
(4) with the intention, actual or virtual, that the ignorant party act on it; and
(5) that party was induced to act on it.

(*Simmons v. Ghaderi* (2008) 44 Cal.4th 570, 584 [citing 13 Witkin (10th ed. 2005) Summary of California Law, *Equity,* § 191 at pp. 527-528]; *Behnke v. State Farm General Insurance Co.* (2011) 196 Cal.App.4th 1443, 1462; *Moore v. State Board of Control* (2003) 112 Cal.App.4th 371, 384.)

3RT 189:21-23) The Tribe, its agents and attorneys of record all knew of the secret, inequitable conveyance of all the "casino assets" to CVEE. (1CT 258, ¶ 6 [T.C. Res. CV-08-20-08-03]; 2CT 371, ¶2 [G.C. Res. 07-01]; 4CT 961, ¶ 2 [G.C. 08-01; superseding G.C. Res. 07-01]; 3RT 188:8-19; 3RT 189:21-23 [referencing Objection No. 9] [admitting ¶ 12:12 (6CT 1664:12) of the Mahdavian Affidavit (6CT 1662-1666) as to the fact of transfer of the casino assets to CVEE as of November 16, 2017, but sustaining Findleton's objection to the extent the averment calls for a conclusion regarding the legality of the transfer].)

Second, the Tribe intended that its conduct would be acted on or the Tribe so acted that Findleton had the right to believe the Tribe so intended. (*Ellenburg,* 763 F.2d at p. 1096.) In this case, such intent to induce Findleton's reliance on the Tribe's deception is easily inferred under the applicable law of evidence by the conspicuous silence of both the Tribe and its counsel. (*Apparel Manufacturers Supply v. National Auto. Cas. Ins. Co.* (1961) 189 Cal.App.2d 443, 469 ["*Apparel Manufacturers*"]; *People v. Brophy* (1954) 122 Cal.App.2d 638, 649 ["*Brophy*"].) In this case, the Tribe falsely presented itself to Findleton as the real party in interest with lawful title to the "casino assets" during a period of 1 year, 2 months, 26 days from November 16, 2017, the date of its secret asset transfer, until the *surprise disclosure* on February 11, 2019 in the Tribe's MFE that all the "casino assets" had been transferred to CVEE without any notice whatsoever to Findleton or the trial court. (7CT 2070:24-28; 7CT 2072:13-17, 2073:25-27, 2074:1-5, 2074:19-27, 2075:1-20.)

Under the California law of evidence, a "*failure to assert* a fact, when it would have been natural to assert it, amounts in effect to an assertion of the nonexistence of the fact." (*Apparel Manufacturers,* 189 Cal.App.2d at p.

469 [internal quotations omitted; italics in original] [quoting 3 Wigmore on Evidence (3d ed.) § 1042]; *Brophy,* 122 Cal.App.2d at p. 649 [internal quotations omitted] [same].) More specifically, there "are several common classes of [such] cases," the first of which, cited in *Brophy,* occurs when there are "[o]missions in legal proceedings to assert what would naturally have been asserted under the circumstances." (*Ibid.*) In this case, the Tribe's deliberate omission of any mention whatsoever of the transfer to CVEE of all of the "casino assets" of the Tribe, then subject to a lawsuit where the plaintiff had recourse solely against such assets, clearly constituted an omission "in legal proceedings to assert what would naturally have been asserted under the circumstances," if only to avoid any implication that the transfer would be deemed to constitute an inequitable or fraudulent conveyance in violation of state or federal law. (*Ibid.*)

Further, the Tribe was under an *affirmative legal duty* to disclose the November 16, 2017 transfer of "casino assets" to Findleton by producing "documentary evidence" of such transfer to avoid a *presumption* that the ownership of the "casino assets" remained with the Tribe. (Solicitor of the United States Department of the Interior ["Interior Solicitor"], Timber as a Capital Asset of the Blackfeet Tribe (Dec. 16, 1958) Opinion No. M-36545, at pp. 1-4, at p. 2 ["*Opinion M-36545*] (7CT 2076-2081[attached as Exhibit A].)[20] (7CT 2065-2066 [argument].)

---

20. Decisions that rely on *Opinion No. M-36545* as valid and recognize the evidentiary presumption it creates include the following: *Parker Drilling Co. v. Metlakatla Indian Community* (D. Alaska 1978) 451 F. Supp. 1127, 1135; *Hydaburg Co-op. v. Hydaburg Fisheries* (Alaska 1992) 826 P.2d 751, 757; *Atkinson v. Haldane* (Alaska 1977) 569 P.2d 151, 171-172; *Dacotah Properties Richfield, Inc. v. Prairie Island Community* (Minn. Ct. App. 1994) 520 N.W.2d 167, 169-170; *S. Unique Ltd. v. Gila River Pima-Maricopa* (Ariz. Ct. App. 1984) 138 Ariz. 378, 384; *Thielen Leasing Inc. v. Jackpot Junction* (Lower Sioux

The Interior Solicitor has conveniently summarized how the evidentiary presumption created by *Opinion M-36545* arises: "[w]here there is a question as to whether tribal resources . . . are held as an asset" of a tribal governmental entity or a tribal business corporation "ownership by the tribe rather than by the business corporation will be *presumed* in the absence of a clear showing to the contrary." (*Quinquennial Index-Digest: Decisions and Opinions of the U.S. Department of the Interior* (Jan. 1955 — Dec. 1959) at p. 201, col. 2.) (7CT 2065) The Tribe obviously failed to make any such clear showing prior to February 11, 2019. (7CT 2070:24-28; 7CT 2072:13-17, 2073:25-27, 2074:1-5, 2074:19-27, 2075:1-20.)

Consequently, the "*failure to assert*" the fact of the November 16, 2017 transfer of the casino assets to CVEE amounted "in effect to an assertion of the nonexistence of the fact," which in this context would be an assertion that the transfer never occurred and ownership of the "casino assets" remained with the Tribe. (*Brophy,* 122 Cal.App.2d at p. 649.) Thus, Findleton clearly had the right to believe that the Tribe's "*failure to assert*" the fact of the asset transfer as an assertion, in effect, that there had been no asset transfer, thereby satisfying the second prong of the equitable estoppel test that the Tribe must be deemed to have intended Findleton to rely on its silence. (*Apparel Manufacturers,* 189 Cal.App.2d at p. 469; *Ellenburg,* 763 F.2d at p. 1096.)

Third, Findleton was "ignorant of the true facts." (*Ibid.*) Findleton's averment of his ignorance of the true facts surrounding the transfer of casino assets on November 16, 2017 is *uncontroverted* in the record. (7CT 2072:13-17, 2073:25-27, 2074:1-5, 2074:19-27, 2075:1-20.)

Indian Community Tribal Court 1996) No. CIV-052, at p. 8 [available for download at http://sandvenlaw.com/?mdocs-file=380].)

Fourth, Findleton relied on the Tribe's conduct to his injury. (*Ellenburg,* 763 F.2d at p. 1096.) Again, Findleton's averment of detrimental reliance on the Tribe's deliberately misleading omission of any notice to Findleton or the trial court of the transfer of casino assets on November 16, 2017 is *uncontroverted* in the record. (7CT 2075:1-20) Findleton specifically averred that he had "spent large sums of money and expended prodigious personal efforts" pursuing his "claims in this lawsuit" against the Tribe all the while "relying on the fact, as represented to [him] by [the Tribe], that [the Tribe] was the party actually and legally in control of all the [Tribe's] . . . assets, including the '[c]asino assets,' in its own name without qualification." (7CT 2075:17-20) Findleton obviously would be left without any effective remedy or recourse if the Tribe were allowed to transfer all the "casino assets" to an entity that somehow placed such assets beyond the reach of the trial court's enforcement powers.

Thus, under the substantial evidence standard, there can be no doubt that the Tribe was equitably estopped to deny that, for purposes of this lawsuit only, that it no longer retained legal title and control of the "casino assets" to prevent the obvious injustice of leaving Findleton remediless and without recourse after over 8 years of litigation. The Order Denying Exemption must be affirmed. (8CT 2363:1-4)

III. THE ORDER GRANTING UNDERTAKING MUST BE AFFIRMED BECAUSE FINDLETON'S MOTION FOR UNDERTAKING ("MFU") WAS AMPLY SUPPORTED BY THE RECORD AND FIRMLY BASED ON WELL-SETTLED LAW.

A. Statutory construction is a question of law reviewed de novo.

The question of whether the Order Granting Undertaking should be affirmed requires a careful construction of several key statutory provisions,

especially Sections 917.1 and 917.9, and is, therefore, subject to the de novo standard of review. (Code Civ. Proc., § 917.1; *Carver v. Chevron U.S.A., Inc*. (2002) 97 Cal.App.4th 132, 142; *Whaley v. Sony Computer Entertainment America, Inc.* (2004) 121 Cal.App.4th 479, 484.)

B. The Order Requiring Undertaking is authorized by Section 917.1 as construed in *Banks v. Manos* and must, therefore, be affirmed.

Under Section 917.1(a)(1), money judgments are *not* automatically stayed on appeal. (Code Civ. Proc., § 917.1, subd. (a)(1); *Nielsen v. Stumbos* (1990) 226 Cal.Aoo.3d 301, 304.) Although the award of costs and attorney fees under Section 125.8 in the trial court's December 10, 2018 Sanctions Order (6CT 1519-1525), currently on appeal in Appeal No. A156459, might superficially appear to be a judgment for costs alone that need not be bonded under Section 917.1(d), the Court of Appeal in *Banks* held, distinguishing *Nielsen,* that "[s]uch sanctions are more closely analogous to judgments for money damages, since they represent damages for abusive legal tactics and are discretionary, than they are to costs, which are routinely awarded, or to contractual attorney's fees, which are similarly routinely awarded and which are statutorily identified as costs in Code of Civil Procedure section 1033.5." (*Banks v. Manos* (1991) 232 Cal.App.3d 123, 128 ["*Banks*"].) *Banks* treated the sanctions awarded in the form of attorney fees as a money judgment requiring an undertaking to stay trial court proceedings, rather than a judgment solely for costs, and denied the petitioners' writ of supersedeas seeking an automatic stay. (*Ibid.,* at p. 126; 7CT 1845-1849.) Thus, the trial court properly exercised its discretion to require the posting of a bond under Section 917.9(a)(3) in its Order Requiring Undertaking in connection with the appeal of its December 10, 2018 Sanctions Order. Further, the trial court's inclusion in its Order Requiring Undertaking of its findings applying

the federal common law doctrine of equitable estoppel to the Tribe was entirely correct give the close interrelationship of the issues and the fact that the three orders on appeal were argued together on an omnibus hearing on April 26, 2019 and shared a common record both below and on appeal. (3RT 110 – 245) Thus, Order Requiring Undertaking must be affirmed.

IV. SINCE ALL THREE ORDERS FROM WHICH THIS APPEAL WAS TAKEN ARE *INTERLOCUTORY,* BOTH IN FORM AND SUBSTANCE, THIS COURT LACKS SUBJECT MATTER JURISDICTION UNDER SECTION 904.1(a)(1) TO REVIEW THIS APPEAL.

A. Appealability is a question of law reviewed de novo.

The issue of appealability requires this Court to construe Section 904.1(a)(1) to determine its own jurisdiction, which is a question of law that is reviewed de novo by the appellate court. (*Shaoxing County Huayue Import & Export v. Bhaumik* (2011) 191 Cal.App.4th 1189, 1195; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 491.)

B. Interlocutory orders are nonappealable.

Under the one final judgment rule, "orders are appealable only when expressly made appealable by statute," or when they are in effect final judgments. (*Malek v. Koshak* (2011) 200 Cal.App.4th 1540, 1544.) An interlocutory order is not a final judgment and, hence, not appealable. (*Yeboah v. Progeny Ventures, Inc.* (2005) 128 CalApp.4th 443, 449 ["*Yeboah*"]; *Eisenberg,* § 2:28, p. 2-22.) Indeed, the "existence of an appealable judgment is a jurisdictional prerequisite to an appeal." (*Doran v. Magan* (1999) 76 Cal.App.4th 1287, 1292; *Brown v. Upside Gading, LP* (Ct. App. 2019) 254 Cal.Rptr.3d 803, 806.) Interlocutory appeals are permitted only if *clearly mandated* and are *strictly construed.* (*Kinoshita v. Horio* (1986) 186 Cal.App.3d 959, 967-968; *Eisenberg,* § 2:23, p. 2-21.) Since the

right of appeal is wholly statutory, no judgment or order is appealable unless it comes within one of the classes enumerated in Section 904.1 or is made appealable by a specific statute. (*Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 267; *Garau v. Torrance Unified School Dist.* (2006) 137 Cal.App.4th 192, 198 [holding that "the right to an appeal is entirely statutory; unless specified by statute no judgment or order is appealable"]; *Olson v. Cory* (1983) 35 Cal.3d 390, 398 ["*Olson*"]; *Eisenberg,* § 2:16, p. 2-15.)

The Tribe relies upon Section 904.1(a)(1) as the basis of its claim of appealability, but that provision only makes appealable by its terms "a judgment, *except an interlocutory judgment* . . . . , or a judgment of contempt . . . ." (Code Civ. Proc., § 904.1(a)(1) [emphasis added].) "An interlocutory judgment or order is a provisional determination of some or all issues in the cause." (*Yeboah,* 128 Cal.App.4th at p. 448 [internal quotation marks omitted].) In contrast, a judgment or order of the trial court is deemed "final" for purposes of its appealability when it *leaves no issue left for future consideration*. (*Olson,* 35 Cal.3d at p. 399.) As the California Supreme Court held in *Olson*, "where no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory." (*Ibid.* [quotation marks omitted]; *Lyon v. Goss* (1942) 19 Cal.2d 659, 670 ["*Lyon*"]; *Dana Point Safe v. Superior Court* (2010) 51 Cal.4th 1, 5 ["*Dana*"]; *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 304 ["*Sullivan*"].) To be final and appealable, the order must "completely" resolve "all issues between all parties." (*Laraway v. Pasadena Unified School Dist.* (2002) 98 Cal.App.4th 579, 582

["*Laraway*"]; Code Civ. Proc., § 577 ["A judgment is the final determination of the rights of the parties in an action or proceeding."]

C. The three orders challenged here are all substantively *interlocutory* and nonappealable.

The first conspicuous clue that none of the individual orders leaves no issue left for future consideration is that there are *three of them*, incontestably establishing that not any one individual order effectively terminates the litigation or completely resolves all the issues between the parties. Each order is only preliminary, extremely limited in scope and necessarily requires further judicial action to determine the rights of the parties. (*Olson,* 35 Cal.3d at p. 399; 8CT 2362-2367, 2381-2383.)

None of the three orders under review in any way purport to "completely" resolve "all issues between all parties." (*Laraway,* 98 Cal.App.4th at p. 582.) Quite the contrary. They anticipate continuing future judicial proceedings in the form of an ongoing debtor's examination at which questions about "casino assets" will be asked and further judicial determinations will be made concerning the fruits of the asset search. (8CT 2366:7-13) The three orders expressly leave a myriad of issues for "future consideration" and requires further "judicial action" before a "final determination of the rights of the parties" can be made. Thus, all three of the orders from which the Tribe has taken an appeal are *interlocutory and nonappealable*. (*Olson,* 35 Cal.3d at p. 399; *Lyon,* 19 Cal.2d at p. 670; *Dana,* 51 Cal.4th at p. 5; *Sullivan,* 15 Cal.4th at p. 304.) Consequently, this Court is without jurisdiction to review this appeal.

V. THE TRIBE'S CLAIM THAT IT IS NOT SUBJECT TO EQUITABLE ESTOPPEL IS FRIVOLOUS AND UNTENABLE.

The Tribe's specious that its standing as a governmental entity somehow immunizes it from the federal common law doctrine of equitable estoppel is easily rebutted as frivolous and unmeritorious in the extreme. (OB 38-43) **First,** the Tribe's estoppel immunity argument was never, explicitly or implicitly, raised below in the trial court and, thus, must be disregarded as an impermissible new argument on appeal. (7CT 2042-2058, 7CT 1946-1948; 8CT 2326-2246) In fairness to both the trial court and the opposing party, legal theories not raised in the trial court cannot be asserted for the first time on appeal. (*Nellie,* 4 Cal.App.5th at p. 997; *Marriage of Nassimi* (2016) 3 Cal.App.5th 667, 695; *Eisenberg,* § 8:229 – 8:236.1, pp. 8-172 – 8-174.)

Second, the Tribe waived governmental immunity to equitable estoppel when it waived tribal sovereign immunity. Government immunity to equitable estoppel is derived from, dependent upon and an integral component of sovereign immunity. (*United States v. Georgia-Pacific Company* (9th Cir. 1970) 421 F.2d 92, 99, n.12 [observing "governmental immunity from estoppel is an off-shoot of sovereign immunity"] citing the following three sources: **(1)** Davis, Administrative Law Treatise (1958) § 17.01, at p. 493; **(2)** Berger, *Estoppel Against the Government* (1954) 21 U.Chi. L.Rev. 680, 683; and **(3)** Pillsbury, *Estoppel Against the Government* (1958) 13 Bus.Law. 508, 510.) The Tribe's waiver of sovereign immunity necessarily included waiver of governmental immunity to estoppel.

Third, governmental immunity to equitable estoppel is unavailable to the Tribe because it has engaged in "affirmative misconduct" that has already result in a "serious injustice" to Findleton. (*Watkins v. U.S. Army* (9th Cir.

1989) 875 F.2d 699, 707 [en banc] [applying equitable estoppel "where justice and fair play require it"].) The "affirmative misconduct" of the Tribe that has resulted in a "serious injustice" to Findleton includes **(1)** the secret, inequitable conveyance of all the "casino assets" to CVEE on November 16, 2017 (3RT 188:8-19; 3RT 189:21-2), **(2)** forum shopping in violation of collateral estoppel in two different tribal courts, first, on January 20, 2017, over five months after the final decision in *Findleton I* on July 29, 2016, and, again, on September 15, 2017 (6CT 1520:6-9, ¶ 1), only 19 days after losing its petition for review of the April 24, 2017 Order to Compel Arbitration (4CT 1137-1139) in the California Supreme Court on August 28, 2017 (6CT 1519, ¶ 3), **(3)** the continuing disobedience of at least six trial court orders (Appeal No. A156459, Declaration of Dario Navarro in Support of Respondent's Opposition to Appellant's Motion Requesting Judicial Notice, ¶ 8, at pp. 25-26), **(4)** apparent witness tampering in connection with the *Elliot Recantation*[21] (*Ibid.,* at p. 4RT 263:15-19, 270:13-16, 276:4-7, 287:3-8; compare original letter at 9CT 2446 with recantation at Exhibit 1 in the Tribe's RJN), and **(5)** the apparent fraud on the court in presenting the newly created CVTC as a duly constituted court of NCICS (9CT 2402-2580, especially 9CT 2420-2421, 2436:15-28, 2495, 2497-2498).

VI. THE TRIBE'S ERISA ARGUMENTS OPPOSING EQUITABLE ESTOPPEL ARE FRIVOLOUS AND UNMERITORIOUS IN THE EXTREME.

The Tribe's has presented a set of manifestly frivolous, classic *straw man arguments* starting from the *erroneous premise* that trial court has

21. The *Elliot Recantation* was attached as Exhibit 1 to the Tribe's June 30, 2020 Notice of Motion and Motion Requesting Judicial Notice, filed in Appeal No. A156459. On July 21, 2020, this Court ruled that the Tribe's opposed request for judicial notice is deferred and will be decided with the merits of the appeal.

applied a special type of federal equitable estoppel that somehow arises only in federal cases concerning the Employee Retirement Income Security Act of 1974 ("ERISA") and that Findleton has somehow commenced a new cause of action by defensively invoking equitable estoppel. (OB 25-28) Never once in any of the three appealed orders did the trial court even mention ERISA or rely on any ERISA-dependent doctrine of equitable estoppel. (8CT 2362-2367, 2381-2383) Neither did Findleton. (7CT 2059-2082) The Tribe is tilting at windmills. The cases cited by Findleton all applied the generic doctrine of equitable estoppel as it arises under federal common law, which sometimes occurs in the context of an ERISA case. (*Gabriel v. Alaska Elec. Pension Fund* (9th Cir. 1992) 773 F.3d 945, 955-958 [federal common law permits application of equitable estoppel]; *Greany,* 973 F.2d at p. 821-823 [same]; *Ellenburg,* 763 F.2d at p. 1095 [same].) The Tribe is arguing against a position never taken by Findleton and never invoked by the trial court in any of the three appealed orders. (7CT 2059-2082; 8CT 2362-2367, 2381-2383)

VII. THE TRIBE'S DUE PROCESS ARGUMENTS OPPOSING EQUITABLE ESTOPPEL ARE FRIVOLOUS AND UNMERITORIOUS IN THE EXTREME.

The Tribe's specious due process arguments on behalf of CEDCO and CVEE are easily rebutted as frivolous and untenable. (OB 25-26, 29-30) **First,** CEDCO and CVEE are not now recognized as parties to this case, as the Tribe concedes (OB 20, 25). Non-parties lack any standing to be heard on appeal, whether in their own right or through an actual party to the case. (*Sabi v. Sterling* (2010) 183 Cal.App.4th 916, 947.) Further, this standing requirement is *jurisdictional* and *may* be raised for the first time on appeal. (*Ibid.*; *Drake v. Pinkham* (2013) 217 Cal.App.4th 400, 407.)

Second, neither the Tribe nor its attorneys of record represent CEDCO or CVEE in this case. (3RT 240:5-7, 5RT 423:9-14.) CEDCO and CVEE, as the record clearly substantiates, are represented by attorney Sara Dutschke Setshwaelo, Esq., who has never made a formal appearance before this Court. (10CT 2739:4-11, 2746:17-23, 2756; 12CT 3356) Thus, neither the Tribe nor its attorneys of record are authorized to represent or assert claims on behalf of CEDCO and CVEE. (*Merco Construction Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724, 729-730 [holding a corporation may only be represented in court buy an authorized attorney]; *Vann v. Shilleh* (1975) 54 Cal.App.3d 192, 199 [same].)

Third, CEDCO and CVEE must be held to have waived any claims they might have on appeal by failing to intervene in the trial court proceedings. (Code Civ. Proc., § 708.190 [providing for right of intervention]; *Doers v. Golden Gate Bridge, Highway & Transportation District* (1979) 23 Cal.3d 180, 184-185 [holding failure to assert claim below waives any right to appeal] ["*Doers*"].)

Fourth, assuming *en arguendo* that CEDCO and CVEE might somehow be deemed to have made a general appearance through the Tribe in this appeal, both entities must be held to have waived sovereign immunity. (*Friends of East Willits v. County of Mendocino* (2002) 101 Cal.App.4th 191, 202 [holding that "the Tribe waived sovereign immunity previously when it made a general appearance in this case."] ["*Friends*"]; *United States v. Oregon* (9th Cir. 1981) 657 F.2d 1009, 1015; but see *Ryan Harvey, Rocks Off, Inc. v. Ute Indian Tribe of the Uintah* (Utah 2017) 2017 UT 75, 416 P.3d 401, 413 [criticizing *Friends*].)

VIII. THE TRIBE'S MISTAKEN CHOICE-OF-LAW ARGUMENT IS FORECLOSED BY THE LAW OF THE CASE AND THE PREEMPTIVE EFFECT OF THE FEDERAL ARBITRATION ACT ("FAA").

The Tribe concludes its Opening Brief with a profoundly mistaken set of arguments concerning the law of the case and the choice-of-law issues before this Court. (OB 47-52) **First,** the law of the case has been determined since the 2016 *Findleton I* decision that the Tribe waived sovereign immunity and that such waiver extended to state court enforcement of the arbitration agreement. (*Findleton I*, 1 Cal.App.5th at pp. 1217, 1218.) *Findleton II* held that "no exhaustion" of any putative tribal court remedy "was required." (*Findleton II,* 27 Cal.App.5th at p. 575.) *Findleton II* held that the creation of a tribal court in this case sometime in 2017, many years after contract formation on August 27, 2008 and the commencement of this suit to compel arbitration on March 23, 2012, could not and did not displace the subject matter jurisdiction of the superior court to enforce the arbitration agreement under federal law. (*Ibid.,* at pp. 674-576, citing *Krempel v. Prairie Island Indian Community* (8th Cir. 1997) 125 F.3d 621, 623; *Johnson v. Gila River Indian Community* (9th Cir.1999) 174 F.3d 1032, 1036; *Comstock Oil & Gas Inc. v. Alabama and Coushatta Indian Tribes* (5th Cir. 2001) 261 F.3d 567, 572–573.) Thus, the law of the case relieves Findleton of any obligation to pursue tribal court remedies. (*Findleton II,* 27 Cal.App.5th at p. 571-572; 4CT 1137-1139, at 1138, ¶¶ (iv), (v), (viii), (ix) [findings in Order to Compel Arbitration (Apr. 24, 2017)].)

Second, the Tribe has failed to establish the required "consensual relationship" between the August 27, 2008 contract (1CT 255-256 [signed Aug. 20, 2008] ["Third Amendment"]; 1CT 257-258 [approved by Tribe August 27, 2008]) and the December 15, 2017 Tribal Enforcement of

Judgments Ordinance as required by controlling precedent. (*Montana v. United States* (1981) 450 U.S. 544, 565 ["*Montana*"].) As the U.S. Supreme Court explained in *Atkinson Trading,* "*Montana's* consensual relationship exception requires that the . . . regulation imposed by the Indian tribe have a nexus to the consensual relationship itself." (*Atkinson Trading Co., Inc. v. Shirley* (2001) 532 U.S. 645, 656.) Given that the putative Tribal Enforcement of Judgments Ordinance of **December 15, 2017** was enacted *so long after* the underlying contract was executed on **August 20, 2008** and this action was commenced on **March 23, 2012**, it could have formed **no part** of the required "nexus to the consensual relationship" reflected in the **August 20, 2008** Third Amendment since it was clearly outside the intent and expectations of the contracting parties. Without such a "nexus" connecting the putative tribal ordinance to the "consensual relationship" embodied in the underlying contract, there is no basis for tribal court jurisdiction. (*Knighton v. Cedarville Rancheria of Northern Paiute Indians* (9th Cir. 2019) 922 F.3d 892, 895-898, 904 [holding tribal law and policies that preexisted the contract formed the required consensual relationship on which tribal jurisdiction could be based].) The Tribe has failed to show any basis for tribal jurisdiction whatsoever under the "consensual relationship exception" to the general immunity of non-members to tribal jurisdiction. (*Montana,* 450 U.S. at p. 565.)

Third, the Tribe was long ago required to file a *Hurtado choice-of-law determination motion* to persuade the trial court that the law chosen by the court or the parties was somehow incorrect and should be displaced by the law of a foreign jurisdiction. (*Hurtado v. Superior Court* (1974) 11 Cal.3d 574, 581.) The Tribe never filed such a motion and has improperly tried to raise a such a defense through judicial notice. (12CT 3316, 3318-

3320) (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 483−484.) The failure of the Tribe to properly and coherently raise its apparent choice-of-law defense waives that theory on appeal. (*Doers,* 23 Cal.3d at p. 184-185.)

Fourth, the Federal Arbitration Act mandates state court jurisdiction and precludes any obstructive, dilatory detour into any tribal court. When the Third Amendment was executed on August 20, 2008, there was no applicable tribal law and only federal law governed the contract, including, of course, the Federal Arbitration Act ("FAA"), which preemptively mandated state court enforcement of the arbitration agreement. (FAA, 9 U.S.C. §§ 1-2 [preempting any obstructive state court order, state law or tribal law or order].)[22] Tribal law is totally irrelevant to this case.

---

22. In *Southland,* the U.S. Supreme Court held that the FAA is a substantive body of law that is binding on both state and federal courts. (*Southland Corp. v. Keating* (1984) 465 U.S. 1, 16 ["*Southland*"].) As the U.S. Supreme Court has specifically emphasized, "the FAA's 'substantive' provisions—§§ 1 and 2—are applicable in state as well as federal court . . . ." (*Volt Information Sciences v. Leland Stanford Jr. University* (1989) 489 U.S. 468, 477 n.6.) FAA Section 1 defines the term "commerce," and Section 2 is "the primary substantive provision of the FAA . . . ." (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 384. As the *Concepcion* court noted, the "overarching purpose of the FAA . . . is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings." (*AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 341, 343-344 ["*Concepcion*"].) Further, tribal contracts have been expressly held subject to the FAA as agreements in "commerce." (*Wisconsin v. Ho-Chunk Nation* (W.D. Wis. 2007) 478 F. Supp. 2d 1093, 1100-1101, revd. in part on other grounds, *Wisconsin v. Ho-Chunk* (7th Cir. 2008) 512 F.3d 921, 936 n.5.) State contractual, procedural law and evidentiary law applies in this case under the preemptive mandate of FAA Section 2. (9 U.S.C. § 2; *Mastrobuono v. Shearson Lehman Hutton, Inc.* (1995) 514 U.S. 52, 59.) "*Concepcion* teaches that [courts] must be alert to new devices and formulas that

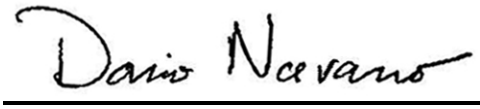
CONCLUSION

Since all three orders challenged in this appeal are well-founded on ample evidence in the record and correctly apply both applicable statutory and decisional law, Findleton respectfully requests this Court to affirm all three orders and deny the appeal.

Dated: November 16, 2020

Respectfully submitted,

LAW OFFICE OF DARIO NAVARRO



Dario Navarro
Attorney for Plaintiff and Respondent

would" obstruct arbitration. (*Epic Systems Corp. v. Lewis* (2018) 138 S.Ct. 1612, 1623; *Concepcion,* 563 U.S. at p. 342.)

APPENDIX A: CHART OF EVIDENTIARY RULINGS BY TRIAL COURT

EVIDENCE SUBJECT TO OBJECTION	TRIAL COURT RULINGS
Evidentiary Ruling No. 1 **EXHIBIT D: Defendant's Tribal Court Motion** for Declaratory Judgment, Temporary Restraining Order, Preliminary and Permanent Injunction against Plaintiff Findleton ("Tribal Court Motion"), putatively filed with the Defendant's tribal court on February 7, 2019, Defendant's Request for Judicial Notice (Apr. 11, 2019) (7CT 1983 – 2013). **Original Written Objection 4:** (1) irrelevant, (2) probative value outweighed by prejudicial effect, (3) insufficient information. (8CT 2272:18-23).	**SUSTAINED:** Tribal Court Motion denied judicial notice. (3RT 168:1-2).
Evidentiary Ruling No. 2 **Declaration of Michael Hunter** (Apr. 18, 2019), ¶¶ 4, 5, 6, and 7 (6CT 2234-2235; [hearsay testimony about tribal participation in New Market Tax Credit ("NMTC") program made on information and belief]). **Original Written Objections Nos. 4-7:** (1) hearsay, (2) lacks foundation, (3) lacks personal knowledge, (4) equitable estoppel. (8CT 2313:15-28 [Objection No. 2 to ¶ 4], 2314:3-27 [Objections 3-4 to ¶¶ 5-6], 2315:3-14 [Objection No. 5 to ¶ 7]).	**SUSTAINED:** averments in paragraphs 4-7 denied admission into evidence as not based on personal knowledge. (3RT 180:12-13 [¶ 4]; 3RT 180:17 [¶ 5]; 3RT 180:21 [¶ 6]; 3RT 180:22-25 – 181:1-2 [¶ 7]).
Evidentiary Ruling No. 3 **Declaration of Ghazal Mahdavian** (Feb. 11, 2019), ¶¶ 7, 8, 9, 10 (6CT 1663:10-28 – 1664:1; [opinion about ownership of casino assets]). **Original Written Objections Nos. 3-6:** (1) improper opinion testimony, (2) equitable estoppel. (8CT 2104:3-15 [Objection No. 3]; 8CT 2104:16-26 [Objection No. 4]; 8CT 2105:3-28 [Objection No. 5]; 8CT 2106:3-16 [Objection No. 6]. Two additional written objections were lodged under Objection No. 5 against ¶ 9: (3) violation of best evidence rule, and (4) lacks foundation. (8CT 2105:3-9).	**SUSTAINED:** paragraphs 7-10 denied admission into evidence as improper opinion testimony. (3RT 184:18-22 [¶¶ 7-8, referencing Objections Nos. 3-4]; 3RT 187:2 [¶ 9, refencing Objection No. 5]; 3RT 187:3-7 [¶ 10, referencing Objection No. 6].

EVIDENCE SUBJECT TO OBJECTION	TRIAL COURT RULINGS
Evidentiary Ruling No. 4 **Declaration of Ghazal Mahdavian** (Feb. 11, 2019), ¶ 11 (6CT 1664:2-11 [opinion testimony about legal status and immunities of CVEE]). **Original Written Objection No. 8:** (1) improper opinion testimony, (2) prejudicial effect outweighs probative value, (3) equitable estoppel. (8CT 2107:3-20 [Objection No. 8]).	**SUSTAINED:** paragraph 11 denied admission into evidence as improper opinion testimony. (3RT 188:1-7 [referencing Objection No. 8]).
Evidentiary Ruling No. 5 **Declaration of Ghazal Mahdavian** (Feb. 11, 2019), ¶ 12:12 (6CT 1664:12 [averment about transfer of casino assets]). **Original Written Objection No. 9:** (1) lacks foundation, (2) improper opinion testimony, (2) best evidence rule, (3) equitable estoppel. (8CT 2107:21-27 – 2108:3-28 [Objection No. 9]).	**OVERRULED IN PART AND SUSTAINED IN PART:** objection overruled as to the fact of asset transfer to CVEE as of November 16, 2017, but sustained to the extent statement calls for a conclusion regarding the legality of the transfer. (3RT 188:8-19; 3RT 189:21-23 [referencing Objection No. 9]).
Evidentiary Ruling No. 6 **Declaration of Ghazal Mahdavian** (Feb. 11, 2019), ¶ 12:12-18 (6CT 1664:12-18 [opinion testimony about reasons for transfer]). **Original Written Objection No. 10:** (1) lacks foundation, (2) improper opinion testimony, (2) best evidence rule, (3) equitable estoppel. (8CT 2109:3-28 [Objection No. 10]).	**SUSTAINED:** paragraph 12:12-18 denied admission into evidence as improper opinion testimony. (3RT 191:2-5 [referencing Objection No. 10]).
Evidentiary Ruling No. 7 **Declaration of Ghazal Mahdavian** (Feb. 11, 2019), ¶ 15 (6CT 1664:21-24 [opinion testimony about legal character of casino funds received by Tribe]). **Original Written Objection No. 11:** (1) improper opinion testimony, (2) prejudicial effect outweighs probative value, (3) equitable estoppel. (8CT 2110:3-18 [Objection No. 11]).	**SUSTAINED:** paragraph 15 denied admission into evidence as improper opinion testimony; equitable estoppel also applies to exclude paragraph. (3RT 192:20-25 – 193:1 [referencing Objection No. 11]).

EVIDENCE SUBJECT TO OBJECTION	TRIAL COURT RULINGS
Evidentiary Ruling No. 8 **Declaration of Ghazal Mahdavian** (Feb. 11, 2019), ¶ 16:25-26 (6CT 1664:25-26 [false opinion testimony about funds needed to support Tribe]). **Original Written Objection No. 12:** (1) improper opinion testimony, (2) speculation, (3) lack of foundation. (8CT 2110:19-27 [Objection No. 12]).	**SUSTAINED:** paragraph 16:25-26 denied admission into evidence as false improper opinion testimony. (3RT 192:4-9 [referencing Objection No. 12]).
Evidentiary Ruling No. 9 **Declaration of Ghazal Mahdavian** (Feb. 11, 2019), p. 3, ¶ 16:26-28, p. 4, ¶ 16:1-2 (6CT 1664:26-28 – 1665:1-2 [opinion testimony about restrictions on use of funds in Tribe's bank accounts]). **Original Written Objection No. 13:** (1) lacks foundation, (2) improper opinion testimony, (3) equitable estoppel. (8CT 2111:3-17 [Objection No. 13]).	**SUSTAINED:** that portion of paragraph 16 from page 3, ¶ 16:26-28 to page 4, ¶ 16:1-2 denied admission into evidence as improper opinion testimony. (3RT 192:13-19 [referencing Objection No. 13]).
Evidentiary Ruling No. 10 **Declaration of Ghazal Mahdavian** (Feb. 11, 2019), p. 4, ¶ 16:2-3 (6CT 1665:2-3 [false opinion testimony about true copy of so-called "financial statements"). **Original Written Objection No. 14:** (1) lacks foundation, (2) improper opinion testimony, (3) equitable estoppel. (8CT 2111:18-28 [Objection No. 14]).	**SUSTAINED:** that portion of paragraph 16:2-3 denied admission into evidence as improper opinion testimony. (3RT 193:2-8 [referencing Objection No. 14]).
Evidentiary Ruling No. 11 **Declaration of Ghazal Mahdavian** (Feb. 11, 2019), ¶ 18:10 (6CT 1665:10 [opinion testimony about use of funds for general welfare of tribal members]). **Original Written Objection No. 17:** (1) lacks foundation, (2) improper opinion testimony, (3) equitable estoppel. (8CT 2113:3-15 [Objection No. 17]).	**SUSTAINED:** paragraph 18 denied admission into evidence as improper opinion testimony. (3RT 193:17-18 [referencing text of ¶ 18 and text of Objection No. 17]; 3RT 196:16-17 [improper opinion testimony]).

EVIDENCE SUBJECT TO OBJECTION	TRIAL COURT RULINGS
Evidentiary Ruling No. 12 **Declaration of Ghazal Mahdavian** (Feb. 11, 2019), ¶ 19:11-15 (6CT 1665:11-15 [opinion testimony about need of tribal members for per capital distribution funds to survive]). **Original Written Objection No. 18:** (1) lacks foundation, (2) improper opinion testimony, (3) equitable estoppel. (8CT 2113:16-27 [Objection No. 18]).	**SUSTAINED:** paragraph 19 denied admission into evidence as improper opinion testimony. (3RT 196:23-25 [referencing Objection No. 18]).
Evidentiary Ruling No. 13 **Declaration of Ghazal Mahdavian** (Feb. 11, 2019), ¶ 20:16-19 (6CT 1665:16-19 [opinion testimony about being "duty bound" by laws of Tribe]). **Original Written Objection No. 19:** (1) improper opinion testimony, (2) equitable estoppel. (8CT 2114:3-14 [Objection No. 19]).	**OVERRULED IN PART AND SUSTAINED IN PART:** objection overruled as to statement of lay opinion about affiant's subjective sense of duty, but sustained to the extent statement calls for a conclusion regarding the legality of being "duty bound." (3RT 197:7-12 [referencing text of ¶ 20 and text of Objection No. 19]).
Evidentiary Ruling No. 14 **Declaration of Little Fawn Boland** (Apr. 18, 2019), ¶ 5:9-10 (8CT 2117:9-10 [irrelevant averment about meet and confer occurrences]). **Original Written Objection No. 2:** (1) irrelevant, (2) improper opinion testimony, (3) probative value outweighed by prejudicial effect (8CT 2285:3-16 [Objection No. 2]).	**SUSTAINED:** paragraph 5 denied admission into evidence as irrelevant. (3RT 200:15-18 [referencing text of ¶ 5 and text of Objection No. 2]).
Evidentiary Ruling No. 15 **Declaration of Little Fawn Boland** (Apr. 18, 2019), ¶ 9:22-23 (8CT 2117:22-23 [undocumented claim about Tribe being selected for NMTC program]). **Original Written Objection No. 6:** (1) lacks foundation, (2) best evidence rule, (3) equitable estoppel (8CT 2287:3-19 [Objection No. 6]).	**SUSTAINED:** paragraph 9 denied admission into evidence as lacking foundation and subject to the best evidence rule. (3RT 201:12-15 [referencing Objection No. 6]).

EVIDENCE SUBJECT TO OBJECTION	TRIAL COURT RULINGS
Evidentiary Ruling No. 16 **Declaration of Little Fawn Boland** (Apr. 18, 2019), ¶ 10:24-26 (8CT 2117:24-26 [averment that Tribe was selected for NMTC program and received tax credit allocation]). **Original Written Objection No. 7:** (1) lacks foundation, (2) best evidence rule, (3) equitable estoppel, (4) hearsay (8CT 2287:20-28 [Objection No. 7]).	**SUSTAINED:** paragraph 10 denied admission into evidence as lacking foundation and subject to the best evidence rule. (3RT 201:16 [referencing Objection No. 7]).
Evidentiary Ruling No. 17 **Declaration of Little Fawn Boland** (Apr. 18, 2019), p. 2, ¶ 11:27-28, p. 3, ¶ 11:1-2 (8CT 2117:27-28, 2118:1-2 [redacted document falsely described as a "letter of commitment," when it was only a "letter of intent" or "LOI" by its own terms]). **Original Written Objection No. 8:** (1) improper opinion testimony, (2) best evidence rule, (3) probative value outweighed by prejudicial effect, (4) equitable estoppel (8CT 2288:3-23 [Objection No. 8]).	**SUSTAINED:** that portion of paragraph 11 from page 2, ¶ 11:27-28 to page 3, ¶ 11:1-2 denied admission into evidence as false, improper opinion testimony, and subject to the best evidence rule. (3RT 209:4-8 [referencing Objection No. 8; "It's not a letter of commitment."]).
Evidentiary Ruling No. 18 **Declaration of Little Fawn Boland** (Apr. 18, 2019), p. 3, ¶ 11:2-3 (8CT 2118:2-3 [averments concerning "comingling funds"]). **Original Written Objection No. 9:** (1) best evidence rule (8CT 2288:24-28 [Objection No. 9]).	**SUSTAINED:** that portion of paragraph 11 at page 2, ¶ 11:2-3 denied admission on "the basis of the best evidence rule because the declarant can't cherry-pick the parts that she deems relevant." (3RT 209:9-12).
Evidentiary Ruling No. 19 **Declaration of Little Fawn Boland** (Apr. 18, 2019), p. 3, ¶ 12, 13, and 14 (8CT 2118:4-13 [averments concerning perception of others regarding "comingling funds"]). **Original Written Objection Nos. 10-12:** (1) hearsay, (2) lacks foundation, (3) best evidence rule, (4) speculation, and (5) equitable estoppel (8CT 2289:3-20 [Objection No. 10]; 8CT 2289:21-28, 2290:3-15 [Objection No. 11]; 8CT 2290:16-28 [Objection No. 12]).	**SUSTAINED:** paragraphs 12, 13, and 14 are denied admission into evidence as hearsay, lacking foundation, and speculation. (3RT 209:13-21 [Objection No. 10]; 3RT 209:22-25, 210:1 [Objection No. 11]; 3RT 210:2-6 [Objection No. 12).

EVIDENCE SUBJECT TO OBJECTION	TRIAL COURT RULINGS
Evidentiary Ruling No. 20 **Declaration of Little Fawn Boland** (Apr. 18, 2019), ¶ 15 :14-16 (8CT 2118:14-16 [incoherent averment concerning purpose of CVEE formation to avoid comingling of funds]). **Original Written Objection No. 13:** (1) lacks foundation, (2) improper opinion testimony, (3) best evidence rule, (4) equitable estoppel (8CT 2291:3-20 [Objection No. 13]).	**SUSTAINED:** paragraph 15 is denied admission into evidence as improper opinion testimony and subject to best evidence rule. (3RT 210:7-9; 3RT 212:14-18 [objection sustained referencing Objection No. 13]).
Evidentiary Ruling No. 21 **Declaration of Little Fawn Boland** (Apr. 18, 2019), ¶ 16:17-19 (8CT 2118:17-19 [opinion about content of "transaction documents" not produced]). **Original Written Objection No. 14:** (1) improper opinion testimony, (2) best evidence rule, (3) equitable estoppel (8CT 2291:21-28; 2292:3-10 [Objection No. 14]).	**SUSTAINED:** paragraph 16:17-19 is denied admission into evidence as improper opinion testimony. (3RT 212:19-25 [objection sustained referencing Objection No. 14]).
Evidentiary Ruling No. 22 **Declaration of Little Fawn Boland** (Apr. 18, 2019), ¶ 17:21-22 (8CT 2118:21-22 [opinion about "due diligence requirements"]). **Original Written Objection No. 16:** (1) lacks foundation, (2) improper opinion testimony, (3) equitable estoppel (8CT 2292:19-28 [Objection No. 16]).	**SUSTAINED:** paragraph 17 is denied admission into evidence as improper opinion testimony. (3RT 213:14 [objection sustained referencing Objection No. 16]).
Evidentiary Ruling No. 23 **Declaration of Little Fawn Boland** (Apr. 18, 2019), ¶ 18:23-26 (8CT 2118:23-26 [opinion about "duly approved" transfer of a casino assets without providing underlying documents]). **Original Written Objection No. 17:** (1) best evidence rule, (2) improper opinion testimony, (3) probative value outweighed by prejudicial effect, (4) equitable estoppel (5) judicial estoppel (8CT 2293:3-28, 2294:3-16 [Objection No. 17]).	**SUSTAINED:** paragraph 18:23-26 is denied admission into evidence as subject to best evidence rule. (3RT 215:4-11, 216:8-12 [objection sustained referencing Objection No. 17]).

EVIDENCE SUBJECT TO OBJECTION	TRIAL COURT RULINGS
Evidentiary Ruling No. 24 **Declaration of Little Fawn Boland** (Apr. 18, 2019), ¶ 18:26-27 (8CT 2118:26-27 [false averment that true and correct copy of the "Asset Transfer Agreement" was provided]). **Original Written Objection No. 18:** (1) best evidence rule, (2) probative value outweighed by prejudicial effect, (3) equitable estoppel (8CT 2294:17-28 [Objection No. 18]).	**SUSTAINED:** paragraph 18:26-27 is denied admission into evidence as false because copy not complete. (3RT 216:18-22 [objection sustained referencing Objection No. 18]).
Evidentiary Ruling No. 25 **Declaration of Little Fawn Boland** (Apr. 18, 2019), p. 3, ¶ 19:28, p. 4 , ¶ 19:1 (8CT 2118:28, 2119:1 [opinion about legality of asset transfer without providing relevant documents]). **Original Written Objection No. 19:** (1) improper opinion testimony, (2) best evidence rule, (3) lacks foundation, (3) equitable estoppel (8CT 2295:3-16 [Objection No. 19]).	**SUSTAINED:** paragraph 19 is denied admission into evidence as improper opinion testimony. (3RT 216:23-25, 217:1-4 [objection sustained referencing Objection No. 19]).
Evidentiary Ruling No. 26 **Declaration of Little Fawn Boland** (Apr. 18, 2019), ¶ 21:3-4 (8CT 2119:3-4 [opinion about timing of transfer of assets]). **Original Written Objection No. 21:** (1) speculation, (2) lacks foundation, (3) improper opinion testimony, (4) equitable estoppel (8CT 2296:3-17 [Objection No. 21]).	**SUSTAINED:** paragraph 21:3-4 is denied admission into evidence as improper opinion testimony. (3RT 217:7-11 [objection sustained referencing Objection No. 21]).
Evidentiary Ruling No. 27 **Declaration of Little Fawn Boland** (Apr. 18, 2019), ¶ 21:4-5 (8CT 2119:4-5 [another opinion about timing of transfer of assets]). **Original Written Objection No. 22:** (1) improper opinion testimony, (2) best evidence rule, (3) lacks foundation, (4) equitable estoppel (8CT 2296:18-27 [Objection No. 22] [There is a typographical error in the evidentiary objections. There are two objections inadvertently and consecutively labeled "Objection 22."])	**SUSTAINED:** paragraph 21:4-5 is denied admission into evidence as improper opinion testimony and lacking foundation. (3RT 217:7-11 [objection sustained referencing both the specific content ("timing is solely because the transaction needed to close by the end of 2017" and the correctly numbered Objection No. 22]).

EVIDENCE SUBJECT TO OBJECTION	TRIAL COURT RULINGS
Evidentiary Ruling No. 28 **Declaration of Little Fawn Boland** (Apr. 18, 2019), ¶ 23:9-15 (8CT 2119:9-15 [irrelevant opinion testimony about AAA activities]). **Original Written Objection Nos. 23-25:** (1) irrelevant (8CT 2297:10-17 [Objection No. 23]; 8CT 2297:18-26 [Objection No. 24]; 8CT 2298:3-9 [Objection No. 25]).	**SUSTAINED:** paragraph 23:9-15 is denied admission into evidence as irrelevant and improper opinion testimony. (3RT 217:20-25 [objection sustained referencing Objection Nos. 23, 24, and 25]).
Evidentiary Ruling No. 29 **Declaration of Little Fawn Boland** (Apr. 18, 2019), ¶ 24:16-18 (8CT 2119:16-18 [averment about Defendant's timing of submission of request to reconsider and opinion testimony about letter]). **Original Written Objection No. 26:** (1) irrelevant (8CT 2298:10-19 [Objection No. 26]).	**OVERRULED IN PART AND SUSTAINED IN PART:** objection overruled as to averment about timing of Defendant's submission to request to reconsider, but sustained with respect to opinion testimony about the letter. (3RT 219:1-8 [referencing content of ¶ 24 and Objection No. 26]).
Note: All objections not listed in the foregoing chart were overruled.	

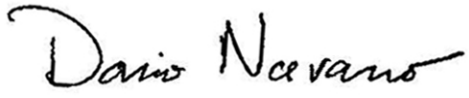
CERTIFICATE OF COMPLIANCE

I certify that the attached brief uses a 13-point Times New Roman font and, according to the computer program used to prepare the foregoing brief, it contains 13,934 words, including footnotes and Appendix A: Chart of Evidentiary Rulings by Trial Court.

Dated: November 16, 2020

Respectfully submitted,

LAW OFFICE OF DARIO NAVARRO



Dario Navarro
Attorney for Plaintiff and Respondent

CERTIFICATE OF SERVICE

RESPONDENT'S BRIEF

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

Court of Appeal Case Numbers: A158171, A158172, A158173

Superior Court Case Number: S CUK 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 *RESPONDENT'S BRIEF* ("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 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)*: **November 16, 2020**

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

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)*: **November 16, 2020** at *(time)*: 7 : 26 ☐ 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: November 16, 2020

Margaret Barnes

Margaret Barnes