

Exhibit G

Roger L. Banan, Esq. - August 23, 2016

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE TOHONO O'ODHAM NATION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:15-cv-01135-DGC
)	
DOUGLAS DUCEY, Governor of)	
Arizona; MARK BRNOVICH,)	
Arizona Attorney General;)	
and DANIEL BERGIN,)	
Director, Arizona)	
Department of Gaming, in)	
their official capacities,)	
)	
Defendants.)	
_____)	

VIDEOTAPED DEPOSITION OF ROGER L. BANAN, ESQ.

Phoenix, Arizona

August 23, 2016

Prepared by:
Meri Coash, RMR, CRR
Certified Reporter
Certification No. 50327

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1 VIDEOTAPED DEPOSITION OF ROGER L. BANAN, ESQ.,

2 was taken on August 23, 2016, commencing at 9:01 a.m., at

3 the law offices of Steptoe & Johnson, LLP, 201 East

4 Washington Street, Suite 1600, Phoenix, Arizona, before

5 Meri Coash, a Certified Reporter in the State of Arizona.

6

7

8 * * *

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18 Also present: Britt E. Clapham II, Esq.;

19 Daniel J. Quigley, Esq.; T. Dawn Farrison, Esq.;

20 and Philip Walberer, videographer

21

22

23

24

25

09:01:44-09:03:15	Page 6	09:04:00-09:05:40	Page 8
<p>1 (Ms. T. Dawn Farrison, Esq., is not</p> <p>2 present.)</p> <p>3</p> <p>4 TRANSCRIPT OF PROCEEDINGS</p> <p>5 THE VIDEOGRAPHER: We are on the record.</p> <p>6 The time on the video monitor is 9:01 a.m. Here begins</p> <p>7 Volume I, video number one in the deposition of Roger L.</p> <p>8 Banan, in the matter of The To- -- Tohono O'odham Nation</p> <p>9 versus Douglas Ducey, in the United States District Court</p> <p>10 for the District of Arizona, Case Number</p> <p>11 2:15-cv-01135-DGC.</p> <p>12 Today's date is August 23rd, 2016. Our</p> <p>13 court reporter is Meri Coash. My name is Philip Walberer,</p> <p>14 certified videographer, representing Coash & Coash. This</p> <p>15 deposition is taking place at Steptoe & Johnson LLP, the</p> <p>16 Collier Center -- Collier Center, 201 East Washington</p> <p>17 Street, Suite 1600.</p> <p>18 Counsel, please identify yourselves and</p> <p>19 state whom you represent.</p> <p>20 MR. TILLEMAN: Karl Tillemann and Jennifer</p> <p>21 Bonneville for the plaintiff.</p> <p>22 MR. HOFFMAN: Matt Hoffman on behalf of</p> <p>23 Director Bergin.</p> <p>24 THE VIDEOGRAPHER: Would the court reporter</p> <p>25 please -- would the court report please swear in the</p>		<p>1 Pongrace, and I reviewed a joint -- or, a Common Interest</p> <p>2 Agreement.</p> <p>3 Q. Okay. We're going to mark as Exhibit 1 a Common</p> <p>4 Interest Agreement. I'm going to ask if that's what you</p> <p>5 reviewed. Okay?</p> <p>6 (Deposition Exhibit 1 was marked for</p> <p>7 identification.)</p> <p>8 (Ms. T. Dawn Farrison, Esq., entered the room.)</p> <p>9 MR. TILLEMAN: While we're distributing</p> <p>10 copies, I note that Ms. Farrison has joined us. And she</p> <p>11 represents the San Lucy District.</p> <p>12 Good morning, Dawn.</p> <p>13 MS. FARRISON: Good morning.</p> <p>14 MR. HOFFMAN: Do you guys have another copy?</p> <p>15 MS. BONNEVILLE: Yes.</p> <p>16 MR. TILLEMAN: Yeah, it's coming.</p> <p>17 MR. HOFFMAN: Thank you.</p> <p>18 BY MR. TILLEMAN:</p> <p>19 Q. Mr. Banan, is the document which I've handed you</p> <p>20 as Exhibit 1 the Common Interest Agreement that you</p> <p>21 reviewed?</p> <p>22 A. Yes, it is.</p> <p>23 Q. And did you -- did you write -- You know what?</p> <p>24 Let's just -- let's just do this.</p> <p>25 MR. TILLEMAN: Mark it as Exhibit 2.</p>	
09:03:16-09:03:57	Page 7	09:06:16-09:07:05	Page 9
<p>1 witness.</p> <p>2</p> <p>3 ROGER L. BANAN, ESQ.,</p> <p>4 called as a witness herein, having been duly sworn by the</p> <p>5 Certified Reporter, was examined and testified as follows:</p> <p>6</p> <p>7 THE VIDEOGRAPHER: You may begin.</p> <p>8</p> <p>9 EXAMINATION</p> <p>10 BY MR. TILLEMAN:</p> <p>11 Q. Good morning, Mr. Banan. How are you?</p> <p>12 A. Good morning. I'm fine, thank you.</p> <p>13 Q. Good.</p> <p>14 My name's Karl Tillemann, and I represent the</p> <p>15 plaintiff, Tohono O'odham Nation, in the action that's</p> <p>16 been filed against Director Bergin.</p> <p>17 And thank you for coming to your deposition</p> <p>18 this morning.</p> <p>19 A. You're welcome.</p> <p>20 Q. What did you do to prepare for your deposition,</p> <p>21 Mr. Banan?</p> <p>22 A. I reviewed two documents and I discussed the</p> <p>23 dep- -- deposition with Mr. Hoffman.</p> <p>24 Q. Which documents did you review?</p> <p>25 A. I reviewed an email which I sent to Donald</p>		<p>1 (Deposition Exhibit 2 was marked for</p> <p>2 identification.)</p> <p>3 BY MR. TILLEMAN:</p> <p>4 Q. I'm going to hand you what's -- we're going to</p> <p>5 hand you what's been marked as Exhibit 2, which is, I</p> <p>6 believe, the email.</p> <p>7 MR. HOFFMAN: Thank you.</p> <p>8 BY MR. TILLEMAN:</p> <p>9 Q. Are these the two documents that you reviewed,</p> <p>10 Mr. Banan?</p> <p>11 A. Yes, they are.</p> <p>12 Q. And can I review the -- first the Common Interest</p> <p>13 Agreement that you -- that you referred to? You signed</p> <p>14 that document on the last page on behalf of the Arizona</p> <p>15 Department of Gaming. Is that right?</p> <p>16 A. That's correct.</p> <p>17 Q. And you signed it on May the 13th, 2015?</p> <p>18 A. Correct.</p> <p>19 Q. Did you sign that with authority from the</p> <p>20 department to do so?</p> <p>21 MR. HOFFMAN: Objection. Form, foundation.</p> <p>22 THE WITNESS: I -- I signed it of my own</p> <p>23 accord.</p> <p>24 BY MR. TILLEMAN:</p> <p>25 Q. Did you review the contents of the agreement with</p>	

<p>09:07:07-09:07:58 Page 10</p> <p>1 Director Bergin?</p> <p>2 A. No, I did not.</p> <p>3 Q. Did you intend to bind the Department of Gaming</p> <p>4 with your signature on this document?</p> <p>5 MR. HOFFMAN: Objection. Form.</p> <p>6 THE WITNESS: I -- I don't know about bind,</p> <p>7 but I -- I was signing on behalf of the department, yes.</p> <p>8 BY MR. TILLEMAN:</p> <p>9 Q. And you had the authority to do so?</p> <p>10 MR. HOFFMAN: Objection. Form.</p> <p>11 BY MR. TILLEMAN:</p> <p>12 Q. In your mind?</p> <p>13 A. As attorney for the department, yes.</p> <p>14 Q. Okay. Is it regular -- Do you -- do you often</p> <p>15 execute agreements on behalf of your client without</p> <p>16 reviewing the contents of them with your client?</p> <p>17 MR. HOFFMAN: Objection. Form, foundation.</p> <p>18 THE WITNESS: Actually, I never have before.</p> <p>19 This is the first document I think I've executed on behalf</p> <p>20 of my client.</p> <p>21 BY MR. TILLEMAN:</p> <p>22 Q. Okay. And you intended to bind the department by</p> <p>23 your signature here?</p> <p>24 MR. HOFFMAN: Objection. Form, foundation.</p> <p>25 THE WITNESS: I don't know about bind. I --</p>	<p>09:09:07-09:10:10 Page 12</p> <p>1 MR. HOFFMAN: Objection. Form, foundation.</p> <p>2 THE WITNESS: I don't know.</p> <p>3 BY MR. TILLEMAN:</p> <p>4 Q. Okay. Have you ever executed an agreement in --</p> <p>5 have you executed any agreement without reviewing it</p> <p>6 before you've executed it other than this one?</p> <p>7 MR. HOFFMAN: Objection. Form, foundation.</p> <p>8 THE WITNESS: Yes, I believe I have.</p> <p>9 BY MR. TILLEMAN:</p> <p>10 Q. What other documents may you have executed</p> <p>11 without reviewing them?</p> <p>12 MR. HOFFMAN: Objection. Form, foundation.</p> <p>13 I think we're getting pretty far afield from the -- the</p> <p>14 deposition notice, but I'll give you a little leeway.</p> <p>15 THE WITNESS: Well, there are various</p> <p>16 documents that I execute pro forma for the department,</p> <p>17 such as notices of intent to deny certification, various</p> <p>18 documents associated with administrative proceedings.</p> <p>19 These are generally documents that I've -- I've seen</p> <p>20 before and I'm familiar with their contents.</p> <p>21 BY MR. TILLEMAN:</p> <p>22 Q. And so thank you for that clarification.</p> <p>23 Have you ever executed a non-pro forma</p> <p>24 document on behalf of your client without reviewing the</p> <p>25 document first?</p>
<p>09:08:01-09:09:06 Page 11</p> <p>1 I was hoping to come under the common agree- -- interest</p> <p>2 agreement by signing it on behalf of the department of</p> <p>3 Gaming.</p> <p>4 BY MR. TILLEMAN:</p> <p>5 Q. Okay. Did you review the Common Interest</p> <p>6 Agreement before you signed it?</p> <p>7 A. No, I did not.</p> <p>8 Q. So you -- you did not review the contents of this</p> <p>9 document before you executed it?</p> <p>10 A. I did not.</p> <p>11 Q. On page 1 of the Common Interest Agreement, in</p> <p>12 the first paragraph, it talks about the Common Interest</p> <p>13 Agreement, and it defines it. And -- and then it says in</p> <p>14 that first paragraph on page 1, "This Agreement</p> <p>15 memorializes the existing understanding, intent, and</p> <p>16 practice of the Parties that any past, present or future</p> <p>17 exchange and/or disclosure among the Parties of</p> <p>18 confidential materials and information relating to the</p> <p>19 subject matter described below does not constitute a</p> <p>20 waiver of any privilege or protection from disclosure."</p> <p>21 Do you see that language?</p> <p>22 A. I do.</p> <p>23 Q. What was the practice of the parties when you</p> <p>24 signed this document concerning the sharing of</p> <p>25 confidential information?</p>	<p>09:10:11-09:11:43 Page 13</p> <p>1 MR. HOFFMAN: Objection. Form.</p> <p>2 THE WITNESS: Yeah, I don't -- I don't know</p> <p>3 what a non-pro forma document would be.</p> <p>4 BY MR. TILLEMAN:</p> <p>5 Q. Can you -- Mr. Banan, other than what you've</p> <p>6 talked about in those pro forma documents, can you</p> <p>7 identify any other document you've executed as an attorney</p> <p>8 on behalf of your client where you have not reviewed the</p> <p>9 contents of that document?</p> <p>10 MR. HOFFMAN: Objection. Form, foundation.</p> <p>11 THE WITNESS: I -- I can't think of any</p> <p>12 right now.</p> <p>13 MR. TILLEMAN: Great.</p> <p>14 BY MR. TILLEMAN:</p> <p>15 Q. Mr. Banan, as you can see in the third paragraph</p> <p>16 of the Common Interest Agreement, ". . . the Parties,</p> <p>17 through their respective counsel, agree that it would be</p> <p>18 in the Parties' common interest to share, at their</p> <p>19 respective options, certain confidential and privileged</p> <p>20 information. The Parties have further concluded that it</p> <p>21 is reasonable and necessary that the Common Interest Group</p> <p>22 works together to share communications and information</p> <p>23 relating to matters of common interest without</p> <p>24 jeopardizing or waiving confidentiality, the</p> <p>25 attorney-client privilege, the attorney work product</p>

09:11:46-09:13:03	Page 14	09:14:08-09:15:08	Page 16
<p>1 protection, or any other privilege or immunity that</p> <p>2 would . . . exist."</p> <p>3 So as the document states, it's the intent</p> <p>4 of the parties to share confidential and privileged</p> <p>5 information. And my question to you is, what information</p> <p>6 did you share with the Indian tribes, the parties to this</p> <p>7 agreement, under this agreement -- under this Common</p> <p>8 Interest Agreement?</p> <p>9 MR. HOFFMAN: Objection. Form, foundation.</p> <p>10 THE WITNESS: Well, the two Indian tribes</p> <p>11 that were a part of the agreement were The Salt River</p> <p>12 Pima-Maricopa Indian Community, The Gila River Indian</p> <p>13 Community.</p> <p>14 BY MR. TILLEMANN:</p> <p>15 Q. Uh-huh.</p> <p>16 A. They were both parties, plaintiffs, along with</p> <p>17 the State in the 2011 litigation against The Tohono</p> <p>18 O'odham Nation, and as such, discussions with regard to</p> <p>19 that case, legal matters with regard to that case, and</p> <p>20 discussions which could be helpful to the department in</p> <p>21 going forward with regard to The Tohono O'odham Nation</p> <p>22 after they had expressed their intent to build the casino</p> <p>23 in the West Valley -- all that sort of information was</p> <p>24 intended to be covered by the Common Interest Agreement.</p> <p>25 Q. Was it, in fact, shared pursuant to the Common</p>		<p>1 the agreement.</p> <p>2 A. Oh, I believe that there were documents that were</p> <p>3 shared with the nontribal parties to the agreement. For</p> <p>4 instance, the Governor's Office, the Attorney General's</p> <p>5 Office, yes.</p> <p>6 Q. Do you know whether after you shared a document</p> <p>7 with the Attorney General's Office or the Governor's</p> <p>8 Office they, in turn, shared it with one of the two Indian</p> <p>9 tribes mentioned in the Common Interest Agreement?</p> <p>10 MR. HOFFMAN: Objection. Form, foundation.</p> <p>11 THE WITNESS: I don't know.</p> <p>12 BY MR. TILLEMANN:</p> <p>13 Q. So with respect to communications that fall</p> <p>14 within this Common Interest Agreement, Exhibit 1 to your</p> <p>15 deposition, the only written document that you're aware of</p> <p>16 is the email that's -- that's been marked as Exhibit 2 to</p> <p>17 your deposition?</p> <p>18 A. That's the only one I'm aware of.</p> <p>19 Q. How confident are you that that is the only one?</p> <p>20 MR. HOFFMAN: Objection. Form, foundation.</p> <p>21 THE WITNESS: Yeah, I -- I -- I don't</p> <p>22 understand the question.</p> <p>23 BY MR. TILLEMANN:</p> <p>24 Q. Did you look?</p> <p>25 A. Did I look at what?</p>	
09:13:06-09:14:06	Page 15	09:15:10-09:15:53	Page 17
<p>1 Interest Agreement?</p> <p>2 MR. HOFFMAN: Objection. Form, foundation.</p> <p>3 THE WITNESS: There were discussions that</p> <p>4 were had with regard to a variety of matters regarding the</p> <p>5 proposed West Valley casino.</p> <p>6 BY MR. TILLEMANN:</p> <p>7 Q. Between these parties to the Common Interest</p> <p>8 Agreement, including current and past practices, were</p> <p>9 there any written communications between the Department of</p> <p>10 Gaming and the Maricopa -- the Maricopa Pima -- I'm</p> <p>11 sorry -- the Salt River Pima-Maricopa Cou- -- Indian</p> <p>12 Community or The -- The Gila River Indian Community and</p> <p>13 the Department of Gaming?</p> <p>14 MR. HOFFMAN: Objection. Form.</p> <p>15 THE WITNESS: The only written communication</p> <p>16 that I'm aware of is Exhibit 2, the email that I sent to</p> <p>17 Mr. Pongrace, who was attorney representing The Gila River</p> <p>18 Tribe at the time.</p> <p>19 BY MR. TILLEMANN:</p> <p>20 Q. Were there any other written documents shared</p> <p>21 between the parties that fell within this Common Interest</p> <p>22 Agreement?</p> <p>23 MR. HOFFMAN: Objection. Form.</p> <p>24 BY MR. TILLEMANN:</p> <p>25 Q. And by "the parties," I mean all the parties to</p>		<p>1 Q. For your doc- -- your -- your records.</p> <p>2 A. Oh, yeah --</p> <p>3 MR. HOFFMAN: Karl, this isn't -- Hold on.</p> <p>4 Objection. This is not a 30(b)(6) witness.</p> <p>5 But you can answer.</p> <p>6 THE WITNESS: Yeah. When the -- in the</p> <p>7 discovery phase of this litigation, I went through every</p> <p>8 email that I had.</p> <p>9 BY MR. TILLEMANN:</p> <p>10 Q. And this is the only one you found that was</p> <p>11 shared with either of those two --</p> <p>12 A. That's correct.</p> <p>13 Q. -- Indian tribes?</p> <p>14 Was -- In terms of shared between those</p> <p>15 Indian tribes, was that after the date of the Common</p> <p>16 Interest Agreement that you looked?</p> <p>17 MR. HOFFMAN: Objection. Form.</p> <p>18 THE WITNESS: Yeah, the Pongrace email is</p> <p>19 dated May 27th and the Common Interest Agreement was</p> <p>20 signed May 13th.</p> <p>21 BY MR. TILLEMANN:</p> <p>22 Q. My question is, did you search for any</p> <p>23 communications before May 13th in your records?</p> <p>24 MR. HOFFMAN: Objection. Form.</p> <p>25 THE WITNESS: I searched after the</p>	

09:15:55-09:16:56	Page 18	09:18:55-09:20:03	Page 20
<p>1 litigation had been commenced by The Tohono O'odham</p> <p>2 Nation.</p> <p>3 BY MR. TILLEMANN:</p> <p>4 Q. As I read the agreement -- the Common Interest</p> <p>5 Agreement, it includes -- it includes prior communications</p> <p>6 between Salt and Gila and the Department of Gaming. And</p> <p>7 my question is, did you search for those documents that</p> <p>8 were prior to the date of the Common Interest Agreement?</p> <p>9 MR. HOFFMAN: Objection. Form, foundation.</p> <p>10 THE WITNESS: I looked through -- after</p> <p>11 litigation had been -- begun, I looked through all of my</p> <p>12 emails that had anything to do with The Tohono O'odham</p> <p>13 Nation and the West Valley casino. This is the only one</p> <p>14 that I found that was a communication directly with the</p> <p>15 attorneys for The Gila River Nation.</p> <p>16 BY MR. TILLEMANN:</p> <p>17 Q. Did you find any communications that were</p> <p>18 indirectly communicating with the nations?</p> <p>19 THE WITNESS: No.</p> <p>20 MR. HOFFMAN: Objection. Form.</p> <p>21 THE WITNESS: No, I did not.</p> <p>22 BY MR. TILLEMANN:</p> <p>23 Q. The Common Interest Agreement refers to another</p> <p>24 agreement, and it says in the -- in the fourth paragraph</p> <p>25 on page 1, last sentence of what's marked paragraph 1,</p>		<p>1 attention to paragraph 2 -- I'm sorry, page 2. It is</p> <p>2 the -- the second full paragraph on page 2. And that --</p> <p>3 and in the middle of that paragraph, there's a sentence</p> <p>4 that begins, "Mr. Banan sent that email pursuant to a</p> <p>5 written common-interest agreement, executed on May 13,</p> <p>6 2015, between the Department of Gaming, the Governor's</p> <p>7 Office, and the Salt River Pima-Maricopa Indian Community,</p> <p>8 and Gila River." Do you see that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. And so in reference to this document, that would</p> <p>11 be the -- the email that we've referenced in the Common</p> <p>12 Interest Agreement we've just looked at?</p> <p>13 MR. HOFFMAN: Objection. Form, foundation.</p> <p>14 THE WITNESS: Exhibit 2 --</p> <p>15 BY MR. TILLEMANN:</p> <p>16 Q. Yes.</p> <p>17 A. -- the Pongrace email?</p> <p>18 Yes.</p> <p>19 Q. And if you'll -- and it says that the email was</p> <p>20 sent pursuant to that written Common Interest Agreement.</p> <p>21 And then on page 3, it's at the end of the</p> <p>22 first full long paragraph, the last sentence reads, "ADG</p> <p>23 and Gila River's common interest extends to related legal,</p> <p>24 regulatory, and legislative challenges, and the parties to</p> <p>25 the common-interest agreement are all obligated to</p>	
09:17:01-09:18:50	Page 19	09:20:06-09:21:18	Page 21
<p>1 "Each Party and its counsel may, in its discretion,</p> <p>2 exchange and share confidential and privileged information</p> <p>3 that is the subject of this Agreement with current members</p> <p>4 of the Common Interest In Application [sic] Of Litigation</p> <p>5 Joint Participation Agreement previously executed</p> <p>6 concerning potential challenges to the planned casino that</p> <p>7 is the subject of this Agreement." Do you see that?</p> <p>8 A. Which paragraph was that, please?</p> <p>9 Q. It's on page 1, and it's the one, two, three --</p> <p>10 fourth paragraph down. It's the paragraph entitled "1."</p> <p>11 A. Oh, the fifth paragraph.</p> <p>12 Q. I'm sorry?</p> <p>13 A. And you said it's the last sentence.</p> <p>14 Q. "Each Party."</p> <p>15 A. "Each Party." Okay. I do see it.</p> <p>16 Q. And what is that agreement?</p> <p>17 MR. HOFFMAN: Objection. Form, foundation.</p> <p>18 THE WITNESS: I do not know.</p> <p>19 (Deposition Exhibit 3 was marked for</p> <p>20 identification.)</p> <p>21 BY MR. TILLEMANN:</p> <p>22 Q. Mr. Banan, I've handed you what's been marked as</p> <p>23 Exhibit 3 to your deposition. It's Director Bergin's</p> <p>24 filing to the court concerning the common interest issue</p> <p>25 surrounding your email. And I want to just direct your</p>		<p>1 maintain the confidentiality of the shared information."</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. Did you check your files for any communications</p> <p>5 with Salt or Gila regarding the -- the related legal,</p> <p>6 regulatory, and legislative challenges that -- that this</p> <p>7 Common Interest Agreement were intended to cover?</p> <p>8 MR. HOFFMAN: Objection. Form, foundation.</p> <p>9 THE WITNESS: I did.</p> <p>10 BY MR. TILLEMANN:</p> <p>11 Q. Okay. And you say there's one email that you</p> <p>12 found?</p> <p>13 A. That's what I found, yes.</p> <p>14 Q. Okay. Regarding the -- the email that you found,</p> <p>15 it references, in the -- in the first sentence, a meeting.</p> <p>16 And this is from you to Mr. Pongrace. And it says, "At</p> <p>17 our meeting you said you had some law about tort- --</p> <p>18 tortuous" -- I'm sure you meant "tort- -- tortious" --</p> <p>19 "interference with contract regarding the department's</p> <p>20 vendor letters." Do you see that?</p> <p>21 A. Yes, I do.</p> <p>22 Q. And when did that meeting occur?</p> <p>23 A. This meeting occurred, I believe, on the date</p> <p>24 that the Common Interest Agreement was signed, which would</p> <p>25 have been May 13th, 2015.</p>	

<p>09:21:24-09:22:45 Page 22</p> <p>1 Q. Did you review a draft of the Common Interest 2 Agreement before you signed it? 3 MR. HOFFMAN: Objection. Form. 4 THE WITNESS: As I said before, I did not. 5 BY MR. TILLEMANN: 6 Q. So you just executed it at the meeting? 7 A. That's right. 8 Q. Who was at that meeting? 9 A. As I recall, the meeting had Mr. Pongrace, his 10 colleague Merrill Godfrey, both of the Akin Gump law firm, 11 representing Gila River; Mary O'Grady and her associate 12 Shane Ham, representing the Salt River Tribe; myself, of 13 course. There were a number of other people there. I 14 believe that they were tribal lawyers and/or tribal 15 members of the -- the two referenced tribes. 16 Q. How many people were there besides the ones 17 you've identified specifically? 18 MR. HOFFMAN: Objection. Form. 19 THE WITNESS: Best of my recollection, 20 per- -- perhaps 7 to 10. 21 BY MR. TILLEMANN: 22 Q. Did they introduce themselves before the meeting 23 to you? 24 A. I think some did, not all. 25 Q. So this is a meeting with about a dozen people?</p>	<p>09:23:48-09:25:11 Page 24</p> <p>1 regarding the vendor letters was? 2 MR. HOFFMAN: Same objection. Form, 3 foundation. 4 THE WITNESS: The Department of Gaming had 5 previous to this meeting decided that they were going to 6 send letters to some of the vendors that were supplying 7 gaming services and supplies to the tribes in order to 8 apprise them of the fact that the Department of Gaming 9 considered the West Valley casino to be illegal, not 10 authorized under the compact, and that by doing business 11 with an illegal casino, that the vendors could be placing 12 their own state certification in jeopardy -- jeopardy. 13 BY MR. TILLEMANN: 14 Q. And before this meeting, did you have any other 15 discussions with tribal leaders or members concerning the 16 vendor letters? 17 A. I believe that there was a -- there was one prior 18 meeting also at the Osborn Maledon law firm, the same cast 19 of carriers -- characters, and the vendor letters were 20 discussed at that time also. 21 Q. And when was the prior meeting? 22 A. I don't know the specific date, but my impression 23 was it was a week before or maybe 8, 10 days prior to the 24 May 13th meeting. 25 Q. Did -- did any of the tribal representatives have</p>
<p>09:22:50-09:23:46 Page 23</p> <p>1 MR. HOFFMAN: Objection. Form, foundation. 2 THE WITNESS: Approximately, yes. 3 MR. HOFFMAN: Misstates the witness's 4 testimony. 5 THE WITNESS: Approximately a dozen, yes. 6 BY MR. TILLEMANN: 7 Q. I didn't mean to misstate anything. Did I 8 misstate anything for you, Mr. Banan? I think it's about 9 a -- about a dozen people at the meeting? 10 A. That's correct. 11 Q. And how long did the meeting last? 12 A. I think it was perhaps an hour, hour and a half. 13 Q. Where was it at? 14 A. It took place at the Osborn Maledon law firm. 15 Q. Was an agenda distributed? 16 A. No, I do not believe so. 17 Q. Were any other documents distributed? 18 A. I don't believe so. 19 Q. Did you discuss at the meeting the vendor letters 20 that were being -- that were being prepared to be sent to 21 The Tohono O'odham Nation? 22 MR. HOFFMAN: Objection. Form, foundation. 23 THE WITNESS: Yes, I did. 24 BY MR. TILLEMANN: 25 Q. And can you tell us what the conversation</p>	<p>09:25:17-09:26:43 Page 25</p> <p>1 input specifically in the language of the vendor letters? 2 A. No. The vendor letter was drafted by the Arizona 3 Department of Gaming. There was no input from anyone 4 else. 5 Q. And in your discussions in the -- in the two 6 meetings concerning the vendor letters, what did you 7 discuss with the Indian tribes? 8 A. Well, frankly, I didn't have any discussions with 9 any of the members of the tribe. All the discussions took 10 place between the attorneys for the two tribes and myself. 11 Certainly at some times some of the other attendees would 12 interject, but I really don't remember any discussions 13 with them. It was largely Mr. Pongrace who was doing 14 the -- doing the talking. 15 Q. Did you discuss the vendor letters with counsel 16 for the tribes? 17 A. Yes. 18 Q. What else did you discuss at the meeting besides 19 the vendor letters? 20 A. At that time, the -- the litigation had not been 21 commenced by Tohono O'odham against the various State 22 parties, and I was reviewing -- reviewing what legal 23 options the Department of Gaming, aka the State, had with 24 regard to trying to prevent the West Valley casino from 25 opening, being operated.</p>

09:26:44-09:27:49	Page 26	09:28:54-09:29:57	Page 28
<p>1 Q. And what options did you review?</p> <p>2 A. Well, the thing that I was looking at at that</p> <p>3 time was the possibility of an ex parte Young suit against</p> <p>4 the tribe in order to litigate the fraud issues, which had</p> <p>5 been dismissed in the 2011 litigation by Judge Campbell.</p> <p>6 Q. Did you -- did you examine any other options?</p> <p>7 MR. HOFFMAN: Objection. Form, foundation.</p> <p>8 I think we're getting -- we're getting very close to</p> <p>9 impeding on the attorney-client privilege here. This is</p> <p>10 not -- these are -- these questions are not about</p> <p>11 communications with the other tribes. You're asking</p> <p>12 his -- about his legal analysis.</p> <p>13 BY MR. TILLEMAN:</p> <p>14 Q. Did you share that legal analysis with the tribe,</p> <p>15 sir?</p> <p>16 A. I did mention the possibility of an ex parte</p> <p>17 Young suit.</p> <p>18 Q. Then let's go ahead and examine the options in</p> <p>19 some detail. What other options did you review?</p> <p>20 MR. HOFFMAN: Now, hold on. Objection.</p> <p>21 Form, foundation. If you want to ask him about what</p> <p>22 options he talked about with the tribe, you're totally</p> <p>23 welcome to do that. I'm -- I'm going to instruct him not</p> <p>24 to answer if you're asking him about his own internal</p> <p>25 deliberations and what options he -- he thought were on</p>		<p>1 they seemed to be very reticent to discuss the possibility</p> <p>2 of ex parte Young. They were actually more interested in,</p> <p>3 you know, "What -- what can the Department of Gaming do</p> <p>4 for us to stop this casino?" And legal options didn't</p> <p>5 seem to be number one on their -- on their list.</p> <p>6 Q. Did you discuss vendor letters as one of the ways</p> <p>7 to stop the casino?</p> <p>8 MR. HOFFMAN: Object- -- objection. Form</p> <p>9 and foundation.</p> <p>10 THE WITNESS: We did discuss vendor letters,</p> <p>11 yes.</p> <p>12 BY MR. TILLEMAN:</p> <p>13 Q. As a form to stop the casino?</p> <p>14 A. Well, I would suppose that ultimately that was</p> <p>15 the goal was to prevent an illegal casino from opening,</p> <p>16 yes.</p> <p>17 Q. Okay. So you -- so you discussed the vendor</p> <p>18 letters as one option with the Indian tribes, Salt and</p> <p>19 Gila, to stop the casino, the West Valley Resort, from</p> <p>20 proceeding?</p> <p>21 MR. HOFFMAN: Objection. Form, foundation.</p> <p>22 THE WITNESS: In essence, yes.</p> <p>23 BY MR. TILLEMAN:</p> <p>24 Q. Did the -- did the tribes receive the vendor</p> <p>25 letter idea favorably?</p>	
09:27:51-09:28:49	Page 27	09:29:59-09:31:16	Page 29
<p>1 the table if those were not communicated to the tribes.</p> <p>2 BY MR. TILLEMAN:</p> <p>3 Q. Are you going to follow your counsel's</p> <p>4 instructions on that, Mr. Banan?</p> <p>5 A. I am.</p> <p>6 Q. Okay. So let's talk about the options you -- you</p> <p>7 talked about with the tribes.</p> <p>8 A. Yes.</p> <p>9 Q. Go ahead. Tell me what -- what you discussed.</p> <p>10 A. I discussed the possibility of an ex parte Young</p> <p>11 suit against The Tohono O'odham Nation in order to</p> <p>12 litigate the fraud issues, which had been dismissed in the</p> <p>13 first 2011 litigation.</p> <p>14 Q. And what did you conclude?</p> <p>15 A. Well, I didn't make any conclusions at that time.</p> <p>16 I was hoping that I could obtain some information from the</p> <p>17 two tribes who had been coplaintiffs along with the State</p> <p>18 in the initial suit. I was hoping that I could gain some</p> <p>19 information from them to elucidate my research with regard</p> <p>20 to the possible success of an ex parte Young suit.</p> <p>21 Q. Did -- did you receive information from them?</p> <p>22 A. Not really.</p> <p>23 Q. What information did you receive from them?</p> <p>24 A. They didn't seem to be much interested in -- in</p> <p>25 legal solutions. And although there was some discussion,</p>		<p>1 MR. HOFFMAN: Objection. Form.</p> <p>2 THE WITNESS: Well, they -- they seemed to</p> <p>3 be interested in anything that could be done by the State</p> <p>4 to help them.</p> <p>5 BY MR. TILLEMAN:</p> <p>6 Q. Okay. Beyond sending the vendor letters that</p> <p>7 would help them stop the casino from going forward, what</p> <p>8 other options did you discuss with the -- with the two</p> <p>9 Indian tribes?</p> <p>10 MR. HOFFMAN: Objection. Form, foundation.</p> <p>11 THE WITNESS: I didn't discuss any other</p> <p>12 options. However, the tribal attorneys, specifically</p> <p>13 Mr. Pongrace, had a number of suggestions which, I assume,</p> <p>14 he was hoping the State would implement on behalf of -- of</p> <p>15 his client tribe.</p> <p>16 BY MR. TILLEMAN:</p> <p>17 Q. And what suggestions were they?</p> <p>18 A. As I recall, there were three different</p> <p>19 suggestions. He was urging that the State do something to</p> <p>20 prevent utility services to the -- the West Valley parcel,</p> <p>21 specifically electricity, water. He was -- and he was</p> <p>22 urging that the State do something to stop trash pickup at</p> <p>23 the -- at the West Valley parcel.</p> <p>24 Q. And what did you say in response to that, sir?</p> <p>25 A. Well, I -- I dismissed that out of hand, and I</p>	

<p>09:31:22-09:32:20 Page 30</p> <p>1 politely refused to discuss it, basically. It was clearly 2 beyond the authority of the Department of Gaming to do any 3 such thing. 4 Q. What were -- what were the other two options that 5 you recall Mr. Pongrace -- 6 A. Those were -- those were the three things: 7 electricity, water, trash pickup. 8 Q. Did you discuss with Mr. Pongrace in that meeting 9 possible actions that the State Department of Liquor 10 Licensing could take? 11 MR. HOFFMAN: Objection. Form, foundation. 12 THE WITNESS: I do not believe that that 13 subject came up, and I certainly didn't bring it up. 14 BY MR. TILLEMAN: 15 Q. Do you recall in the prior meeting whether that 16 meeting -- whether the -- the licensing from the state 17 liquor department came up with discussions from the two 18 Indian tribes? 19 MR. HOFFMAN: Ob- -- objection. Form, 20 foundation. 21 THE WITNESS: I don't believe so. I believe 22 it was strictly Mr. Pongrace urging the electricity, 23 water, trash pickup. And I do recall a fourth item, and 24 that's that he was urging that the State send letters to 25 gaming employees who had been certified to put them on</p>	<p>09:33:47-09:34:35 Page 32</p> <p>1 discussing with Mr. Cocca the information that was shared 2 with the two Indian tribes? 3 MR. HOFFMAN: Hold on. I'm going to object. 4 I don't think this is a question about communications with 5 other tribes. If you can elucidate me, who is Mr. Cocca? 6 MR. TILLEMAN: He's the State Department of 7 Liquor Licensing director, I believe. 8 THE WITNESS: That's correct. 9 BY MR. TILLEMAN: 10 Q. And so did -- did anyone at the Department of 11 Gaming have a discussion with Mr. Cocca that -- that 12 talked about the -- the interaction that you had had with 13 Gila River and Salt? 14 MR. HOFFMAN: Well, to the extent you're 15 asking about communications with Director Bergin, I'm 16 going to advise Mr. Banan -- 17 That to the extent you have information on 18 this topic that you gained from conversations that you had 19 with Dir- -- with Director Bergin, I believe that's 20 attorney-client privilege and I would instruct you not to 21 answer. 22 THE WITNESS: Could you ask the question 23 again, please? 24 BY MR. TILLEMAN: 25 Q. Yeah.</p>
<p>09:32:27-09:33:43 Page 31</p> <p>1 notice that employment at a -- an illegal casino could 2 possibly jeopardize their state certification. I 3 dismissed that one out of hand, too. 4 BY MR. TILLEMAN: 5 Q. Did the department ever send gaming employees 6 letters regarding their -- their work at the West Valley 7 Resort? 8 A. No, we did not. 9 Q. So there was never any communication between the 10 State Department of Gaming and Gila River or Salt River 11 concerning the licensing of the West Valley Resort with 12 the State Department of Liquor? 13 A. Not to my knowledge. 14 Q. Did Mr. Cocca -- Am I saying that correctly? 15 A. I believe that's his name, yeah. 16 Q. Did he ever attend any of the meetings that you 17 were -- you were present? 18 A. No, he did not. 19 Q. Did you ever discuss with Mr. Cocca the -- what 20 occurred at your meetings with the two Indian tribes? 21 MR. HOFFMAN: Objection. Form, foundation. 22 THE WITNESS: No. 23 BY MR. TILLEMAN: 24 Q. Did you -- were you ever aware of -- of 25 Director Bergin or anyone else at the Department of Gaming</p>	<p>09:34:36-09:35:52 Page 33</p> <p>1 I'm just trying to see if you know of any 2 communications be- -- between the Department of Gaming, 3 would include Director Bergin, and the state liquor 4 licensing board that raised the concerns and discussed the 5 concerns with the Gila River and Salt River tribes? 6 MR. HOFFMAN: Same -- same objection. 7 If the only information you have comes from 8 communications with Director Bergin, I would instruct you 9 not to answer. If you -- if you have information that -- 10 that's not from communications with Director Bergin, you 11 can answer. But otherwise, I would instruct you not to 12 answer. 13 THE WITNESS: I attended -- Mr. Cocca 14 requested a meeting with the Department of Gaming. I 15 don't know when that took place. He came to the 16 Department of Gaming, met with myself and Director Bergin. 17 He was seeking information with regard to the evidence 18 presented in the 2011 litigation. At that meeting, which 19 is the only meeting I recall ever having -- the only time 20 I've met Director Cocca, there was no discussion of 21 anything that either Salt or Gila had said at the meetings 22 with Director Cocca. 23 BY MR. TILLEMAN: 24 Q. Do you recall, did you tell Director Bergin about 25 this Common Interest Agreement?</p>

<p>09:35:55-09:36:50 Page 34</p> <p>1 MR. HOFFMAN: Objection. Form, foundation. 2 And, again, I want to caution the witness 3 we're turning very closely to attorney-client-privileged 4 communications. 5 THE WITNESS: I -- I told him that I signed 6 a Common Interest Agreement, yes. 7 BY MR. TILLEMAN: 8 Q. Did you tell him that you signed a Common 9 Interest Agreement with Gila River? 10 A. Yes. 11 Q. Did you tell him that you signed a Common 12 Interest Agreement with Salt River? 13 A. Yes. 14 Q. And in the context of describing the agreement, 15 did you tell him anything about the agreement? 16 MR. HOFFMAN: Objection. Form, foundation. 17 And, again, I think we're about to cross a 18 line here, so to the extent that this calls for -- for you 19 to disclose attorney-client-privileged communications with 20 Director Bergin, I would instruct you not to answer. 21 THE WITNESS: I hadn't even read the 22 agreement at that time. I just told him I had signed 23 the -- the agreement which was brought to the meeting by, 24 I believe, Ms. McNeil Staudenmaier, as I recall. But I'm 25 not sure about that.</p>	<p>09:38:07-09:39:59 Page 36</p> <p>1 either of those two tribes? 2 A. No, he -- he did not. In fact, when the tribes 3 asked for the meetings, Director Bergin believed that it 4 would be inappropriate and asked me to attend in his 5 stead. 6 Q. Did you discuss with -- so -- But before the 7 meeting, you didn't discuss signing of a confidentiality 8 agreement? 9 A. Which meeting? 10 Q. Before you signed the -- the confidentiality 11 agreement. 12 A. No. I don't believe so. 13 Q. Did you attend a meeting with Director Bergin and 14 the Salt River Indian Tribe concerning the West Valley 15 Resort? 16 MR. HOFFMAN: Objection. Form, foundation. 17 THE WITNESS: To the best of my knowledge, 18 Director Bergin has never attended any meeting with either 19 Salt or Gila. 20 (Deposition Exhibit 4 was marked for 21 identification.) 22 BY MR. TILLEMAN: 23 Q. I direct your attention, Mr. Banan, to page 104 24 of Director Bergin's 30(b)(6) deposition. This has been 25 marked as Exhibit 4 to your deposition. And there's a</p>
<p>09:36:51-09:38:03 Page 35</p> <p>1 BY MR. TILLEMAN: 2 Q. Who else from -- so you were there at the -- at 3 the -- Let's talk about the -- the May -- the second 4 meeting that you had with -- 5 A. Yeah. 6 Q. So Ms. Staudenmaier was at that meeting? 7 A. The second meeting would be the May 13th meeting 8 when the Common Interest Agreement was signed. Yes. 9 Q. And was she at the prior meeting that you had 10 with these Indian -- 11 A. I believe so, yes. 12 Q. Was there anyone else from the Governor's Office 13 present at those meetings besides Ms. Staudenmaier? 14 A. I remember Mr. Johnson -- Brett Johnson -- being 15 at one of the meetings. I can't remember if he was at 16 both of those meetings or not. 17 Q. Was there anyone else from the State of Arizona 18 present at those meetings? 19 A. The -- at the May 13th meeting, Assistant 20 Attorney General Mike Tryon was present, and you can see 21 his signature on the -- the May 13th Common Interest 22 Agreement. 23 Q. Anyone else? 24 A. That's the only people I can think of. 25 Q. Did Director Bergin ever attend a meeting with</p>	<p>09:40:05-09:40:48 Page 37</p> <p>1 series of questions that begins with Question 2, asking 2 Director Bergin whether he met with other Indian nations 3 about the West Valley Resort. 4 "Answer: Yes. 5 "Question: Who have you met with? 6 "We met with -- and I'm getting -- Met with 7 some representatives from Salt River. 8 "Who was that? 9 "Mary O'Grady, Andrew Kelly. I don't 10 remember all the other people . . . There were two or 11 three other people in that meeting as well . . . I 12 don't -- I don't remember their names. 13 "From -- from The Salt River Nation -- 14 "They were representatives of the Salt 15 River. At least that was my impression. 16 "Who -- who from -- who from the department? 17 "Roger and me. 18 "What was discussed?" 19 And then you say, They asked us to do 20 something. 21 Does that refresh your recollection whether 22 Director Bergin attended meetings with either Salt or Gila 23 concerning the West Valley Resort? 24 A. With regard to the two meetings that I've 25 discussed, Director Bergin was not there. And I can say</p>

<p>09:40:51-09:41:50 Page 38</p> <p>1 that with certainty. I don't know what he's talking about</p> <p>2 here.</p> <p>3 Q. And -- and my -- I think my question had gone</p> <p>4 beyond those two meetings. Were you aware -- and I -- I'm</p> <p>5 just going to ask you again to make sure we're on the same</p> <p>6 page.</p> <p>7 Are you aware of any meeting that</p> <p>8 Director Bergin had with either Salt or Gila concerning</p> <p>9 the West Valley Resort?</p> <p>10 A. No.</p> <p>11 Q. Okay. So you don't recall what he's talking</p> <p>12 about here?</p> <p>13 A. I -- I don't know.</p> <p>14 Q. Okay. At -- at the two meetings that you had</p> <p>15 with Salt and with Gila, you say there were other options</p> <p>16 that they were interested in the department pursuing.</p> <p>17 Were one of -- did potential legislation also -- was</p> <p>18 potential federal legislation also discussed?</p> <p>19 A. Yes. The Keep the Promise Act was discussed,</p> <p>20 once again, largely by Mr. Pongrace.</p> <p>21 Q. Did Mr. Pongrace ask the department to contact</p> <p>22 congressional leaders concerning the Keep the Promise Act?</p> <p>23 MR. HOFFMAN: Objection. Form, foundation.</p> <p>24 THE WITNESS: He did not.</p> <p>25</p>	<p>09:42:57-09:43:46 Page 40</p> <p>1 A. Yes.</p> <p>2 Q. Did you tell Director Bergin what Gila had said</p> <p>3 to you?</p> <p>4 A. Yes.</p> <p>5 Q. And did you -- did you discuss the vendor</p> <p>6 letters -- the fact that Gila wanted you to send the</p> <p>7 vendor letters?</p> <p>8 MR. HOFFMAN: Objection. Form, foundation.</p> <p>9 I'm going -- you know, at this point, I'm going to</p> <p>10 instruct the witness not to answer. You're now slyly</p> <p>11 getting into the substance of communications.</p> <p>12 MR. TILLEMANN: No slyly, Matt. I don't mean</p> <p>13 to do that. I -- I want to ask about the contents of</p> <p>14 these -- these nonprivileged communications, and I think</p> <p>15 I'm entitled to ask Mr. Banan whether he communicated that</p> <p>16 information to Director Bergin. And that's all I'm</p> <p>17 asking.</p> <p>18 MR. HOFFMAN: Okay.</p> <p>19 MR. TILLEMANN: I don't think that's</p> <p>20 attorney-client.</p> <p>21 MR. HOFFMAN: Go ahead. Go ahead.</p> <p>22 MR. TILLEMANN: I don't think it's sly, and I</p> <p>23 think it's -- it's very appropriate.</p> <p>24 BY MR. TILLEMANN:</p> <p>25 Q. Did you discuss the vendor letters -- the fact</p>
<p>09:41:51-09:42:55 Page 39</p> <p>1 BY MR. TILLEMANN:</p> <p>2 Q. Did you -- in communica- -- Were you aware of</p> <p>3 any communications the Department of Gaming had with --</p> <p>4 with -- with leaders in -- in Washington concerning</p> <p>5 federal legislation?</p> <p>6 A. No.</p> <p>7 Q. You never discussed with Director Bergin the</p> <p>8 topic of the State Department of Gaming's --</p> <p>9 MR. HOFFMAN: Objection. I'm going to</p> <p>10 instruct the witness not to answer. That's</p> <p>11 attorney-client privilege.</p> <p>12 BY MR. TILLEMANN:</p> <p>13 Q. Did you ever communicate to Director Bergin the</p> <p>14 information you learned from any meeting you had with the</p> <p>15 tribes concerning federal legislation?</p> <p>16 MR. HOFFMAN: Ob- -- objection. Form,</p> <p>17 foundation.</p> <p>18 You -- you -- you can answer the question</p> <p>19 whether you communicated with Director Bergin, but in</p> <p>20 terms of the substance of any conversation you had with</p> <p>21 Director Bergin, I would instruct you not to answer.</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. TILLEMANN:</p> <p>24 Q. You did discuss the meetings you had with Gila</p> <p>25 and Salt with Director Bergin?</p>	<p>09:43:47-09:44:55 Page 41</p> <p>1 that Gila wanted you to send the vendor letters --</p> <p>2 MR. HOFFMAN: Hold -- hold on.</p> <p>3 BY MR. TILLEMANN:</p> <p>4 Q. -- with Director Bergin?</p> <p>5 MR. HOFFMAN: Your -- your question says did</p> <p>6 you discuss. If you want to ask him if he communicated</p> <p>7 something -- I -- I object to the term "discussed"</p> <p>8 because that -- that conveys a back-and-forth. So that's</p> <p>9 my caution to you is I don't want Mr. Banan to disclose</p> <p>10 attorney-client communications as part of any discussion</p> <p>11 with Mr. Bergin. If you want to ask him whether he</p> <p>12 communicated something from -- that he learned at the</p> <p>13 meeting to Director Bergin, I'll allow that.</p> <p>14 BY MR. TILLEMANN:</p> <p>15 Q. Did you -- did you communicate with him -- with</p> <p>16 Director Bergin the contents of the meetings you had had</p> <p>17 with Gila and Salt?</p> <p>18 A. Yes. That was my purpose of going to the meeting</p> <p>19 was to brief him on what took place at the meeting.</p> <p>20 Q. Okay. What else did you discuss with Gila and</p> <p>21 Salt at the meeting when you signed the Common Interest</p> <p>22 Agreement?</p> <p>23 MR. HOFFMAN: Objection. Form, foundation.</p> <p>24 THE WITNESS: I think I've already discussed</p> <p>25 the subjects of conversation, that Mr. Pongrace was urging</p>

<p>09:45:02-09:46:34 Page 42</p> <p>1 various forms of action that the State take. I was 2 attempting to elicit information about the possibility of 3 ex parte Young against Tohono O'odham, knowing that they 4 had already brought suit. We discussed the -- the -- the 5 vendor letters. Pongrace brought up the employee letters. 6 And I believe that that's pretty much everything that was 7 discussed. 8 BY MR. TILLEMAN: 9 Q. Mr. Banan, you said that you discussed ex parte 10 Young because they had already brought suit. 11 A. Well, the 2011 suit -- the State had brought suit 12 against The Tohono O'odham Nation, not an ex parte Young 13 suit against tribal leaders. And I was reviewing the 14 legal options of the department after The Tohono O'odham 15 Nation had announced that they were going forward with 16 their casino, and so I was considering the possibility of 17 ex parte Young suit against tribal leaders in order to 18 litigate the fraud claims, which had been dismissed by 19 Judge Campbell during the 2011 litigation. 20 Q. Okay. So let's focus specifically on the 21 May 13th meeting. At that meeting, you discussed with 22 tribal leaders from Gila and from Salt and representatives 23 of the state Attorney General's Office and the Governor's 24 Office the -- those two tribes' desire to thwart the West 25 Valley casino?</p>	<p>09:47:30-09:49:01 Page 44</p> <p>1 that up. 2 Q. And tell me what you said. 3 A. I was once again trying to elicit information 4 from the tribal attorneys that might help my research with 5 regard to this matter, and it had occurred to me that 6 there was the possibility that Tohono O'odham Nation could 7 get a vendor and encourage them to bring a lawsuit against 8 the Department of Gaming alleging a tortious interference 9 with a business relationship. And so I brought that up in 10 the hopes that there was somebody there that could 11 offer -- might have thought about that and could give me 12 any information they might have with regard to that. This 13 was just a thought that had occurred to me, and so I threw 14 it out there to see if anybody would comment. 15 Q. And -- and so the vendor letters were discussed 16 in the context of stopping the West Valley casino at the 17 meeting you had with Gila and Salt -- 18 MR. HOFFMAN: Objection. Form. 19 BY MR. TILLEMAN: 20 Q. -- correct? 21 A. Well, I'm -- I'm not sure if we believed that it 22 would stop it, but we definitely wanted to make sure that 23 we did everything we could that was within the authority 24 of the Department of Gaming not to encourage or put our 25 stamp of approval on what we believed to be an</p>
<p>09:46:34-09:47:25 Page 43</p> <p>1 MR. HOFFMAN: Objection. Form, foundation. 2 BY MR. TILLEMAN: 3 Q. To stop it? 4 A. That was -- that was the general subject, yes. 5 Q. And in the context of their desiring to stop the 6 West Valley casino, you discussed with them your vendor 7 letters? 8 MR. HOFFMAN: Objection. Form, foundation. 9 THE WITNESS: I don't believe the vendor 10 letter had actually been written at that time, but we 11 discussed the possibility of sending the vendor letter and 12 the intent of the department to do that in the future. 13 BY MR. TILLEMAN: 14 Q. And you discussed that with the Indian tribes, 15 the Salt and Gila? 16 A. With their attorneys. 17 Q. And they indicated they were -- they would like 18 you to do so -- they would like the department to send 19 those letters? 20 A. That's correct. 21 MR. HOFFMAN: Objection. Form, foundation. 22 BY MR. TILLEMAN: 23 Q. And at the -- at the meeting, you discussed with 24 the attorneys tortious interference with contract? 25 A. That subject did come up. I believe I brought</p>	<p>09:49:04-09:49:43 Page 45</p> <p>1 unauthorized casino. 2 Q. And if the department could, the department's 3 desire was to stop the casino. Is that right? 4 A. I believe that's correct. 5 Q. And you told that to the Indian tribes? 6 A. I believe I did, yeah. 7 Q. And -- and they said they wanted to do the same 8 thing? 9 A. Correct. 10 Q. And so then you -- you -- you said to them you 11 had thought about a ven- -- the vendor letters that hadn't 12 yet been written? 13 A. Uh-huh. 14 MR. HOFFMAN: Objection. Form, foundation. 15 THE WITNESS: I'm not really sure about when 16 the vendor letters were written, but we had certainly, at 17 the Department of Gaming, contemplated taking that action. 18 BY MR. TILLEMAN: 19 Q. So at the May 13th meeting, you had contemplated 20 sending vendor letters? 21 A. Uh-huh. 22 MR. HOFFMAN: Objection. Form, foundation. 23 BY MR. TILLEMAN: 24 Q. Correct? 25 A. Correct.</p>

<p>09:49:44-09:50:39 Page 46</p> <p>1 Q. Prior to that. 2 And -- and then in that context, you -- you 3 shared with Gila and Salt the possibility you had thought 4 of that the Nation may challenge the vendor letters based 5 on tortious interference with contract? 6 A. Well, we thought the Nation would do it through a 7 surrogate by getting a -- a third party to allege tortious 8 interference. 9 Q. So you discussed that legal strategy with these 10 individuals at that meeting? 11 MR. HOFFMAN: Objection. Form, foundation. 12 THE WITNESS: Actually, it wasn't discussing 13 a le- -- legal strategy. It was just mentioning what I've 14 just told you and seeing if there was anybody there that 15 had any comments. 16 BY MR. TILLEMAN: 17 Q. And did they have any comments? 18 A. Mr. Pongrace did. 19 Q. And what did he say? 20 A. His comment was that "Oh, don't worry about that. 21 We've already done research on that issue, and that claim 22 will -- will never work." 23 Q. Did anyone else comment, other than Mr. Pongrace, 24 on tortious -- 25 A. No. I believe Mr. Pongrace was the only one.</p>	<p>09:51:33-09:52:35 Page 48</p> <p>1 A. Or anybody at Akin Gump. 2 Q. What about anybody at the Gila River Indian 3 community? 4 A. No. That -- It became a dead issue. It was 5 never mentioned again. 6 Q. Okay. You never heard anything about this issue 7 from Salt River? 8 A. No. 9 Q. Okay. Did you ever follow up on the research 10 that Mr. Pongrace had suggested they had already 11 conducted? 12 MR. HOFFMAN: Objection. Form, foundation. 13 I'm also going to -- To the extent this 14 gets into your role as an attorney for the director of the 15 Department of Gaming, I'm going to instruct you not to 16 answer. 17 BY MR. TILLEMAN: 18 Q. Outside what -- what Mr. Hoffman has directed, 19 did you -- did you follow up on this personally? 20 MR. HOFFMAN: You can -- if you want to 21 talk -- if you had any communications with any tribal 22 leaders that you wish to discuss or had, you can talk 23 about that. If the follow-up involves your work as an 24 attorney within the Arizona Department of Gaming, I'm 25 going to instruct you not to answer.</p>
<p>09:50:41-09:51:26 Page 47</p> <p>1 Q. Just let me finish my question. 2 A. Sorry. 3 Q. Did anyone else at the meeting, besides 4 Mr. Pongrace, comment on the tortious interference with 5 contract theory that you'd thrown out? 6 A. No. 7 Q. And then you wrote this letter asking for 8 Mr. Pongrace's input on that -- on that issue? 9 MR. HOFFMAN: Objection. Form. 10 THE WITNESS: He said that they had -- 11 "they" being, I assume, Akin Gump -- had done research on 12 this issue, so I was anxious to acquire that research. 13 BY MR. TILLEMAN: 14 Q. And did you -- and that's why you wrote -- 15 That's one of the purposes of writing this email? 16 A. That is the purpose. 17 Q. And did you receive any information back from 18 Mr. Pongrace? 19 A. I received nothing back from Mr. Pongrace. 20 Q. Did you receive a phone call back from him saying 21 anything about this? 22 A. No. Mr. Pongrace never responded to this email. 23 Q. Okay. So just -- I -- I got that. I just want 24 to make sure. So in response to this email, you received 25 no written or -- or verbal response from Mr. Pongrace?</p>	<p>09:52:36-09:54:16 Page 49</p> <p>1 THE WITNESS: I had no further 2 communications with any tribal officials with regard to 3 the tortious interference matter that I'd brought up. 4 BY MR. TILLEMAN: 5 Q. What other meetings did you have with Salt or 6 Gila concerning the West Valley Resort besides the two 7 that we've already discussed? 8 A. I remember one additional meeting. This meeting 9 took place at the law firm of Snell & Wilmer. It 10 occurred, I believe, maybe several weeks after the -- the 11 May 13th meeting. Maybe a month. I'm not sure. And as I 12 recall, it was the same attendees that were at the 13 previous two Osborn Maledon meetings. 14 Q. And what was discussed at the third meeting, if 15 you know? 16 A. I can't remember anything about that meeting. By 17 that point in time, I'd attended two of these meetings and 18 they -- they both had been essentially the same thing: 19 the tribes urging the State to do something to help them. 20 And it was pretty much, as I recall, the same -- same old 21 things. Mr. Pongrace going on about the status of the -- 22 the Keep the Promise Act. Apparently that was within his 23 purview. He is, I gather, more a lobbyist in Washington, 24 D.C., than an attorney for the Akin Gump group, and so he 25 would apprise everybody on the -- the progress of the Keep</p>

09:54:19-09:55:08 Page 50	09:56:01-09:57:03 Page 52
<p>1 the Promise Act.</p> <p>2 Q. Can I just stop right there?</p> <p>3 A. Yeah.</p> <p>4 Q. What did he say concerning the progress of the</p> <p>5 Keep the Promise Act? And so I'm going to make this in</p> <p>6 any three of those meetings. What did Mr. Pongrace talk</p> <p>7 to you about the Keep the Promise Act?</p> <p>8 A. Well, each time he would assure everybody that it</p> <p>9 was moving forward well and he had great hopes that it</p> <p>10 would pass and be signed into law.</p> <p>11 Q. What other details did he give you about Keep the</p> <p>12 Promise?</p> <p>13 A. You know, I -- I remember he went on about</p> <p>14 parliamentary procedure and various stratagems that are --</p> <p>15 that were being used by the congressmen, but, you know, I</p> <p>16 don't know much about any of that stuff and I wasn't</p> <p>17 really paying much attention.</p> <p>18 Q. Did he --</p> <p>19 A. It seemed like it didn't have anything to do with</p> <p>20 me.</p> <p>21 Q. Did he discuss timing?</p> <p>22 A. I don't recall.</p> <p>23 Q. What -- what -- what about the stratagems did</p> <p>24 he -- do you recall that he -- as he went on and on -- as</p> <p>25 he went on about the stratagems, what did -- what did he</p>	<p>1 Q. -- at any of the other meetings?</p> <p>2 A. No.</p> <p>3 Q. Did any official from the Department of Gaming</p> <p>4 attend any of the meetings that you were at with Salt and</p> <p>5 Gila?</p> <p>6 A. No.</p> <p>7 Q. Have you met with any other regulated entity</p> <p>8 concerning the West Valley Resort, meaning any other</p> <p>9 Indian tribe besides Salt and Gila?</p> <p>10 A. We had several meetings with The Tohono O'odham</p> <p>11 Nation, which they asked for.</p> <p>12 Q. Uh-huh. Concerning the West Valley Resort?</p> <p>13 A. Yes.</p> <p>14 Q. And do you recall when those meetings occurred?</p> <p>15 A. They were prior to the -- the three meetings that</p> <p>16 I discussed, and they were generally, I believe, at the</p> <p>17 Governor's Office.</p> <p>18 Q. Okay. Other than The Tohono O'odham Nation, did</p> <p>19 you have any meetings with any other Indian tribes</p> <p>20 concerning the West Valley Resort?</p> <p>21 A. Other than Salt and Gila?</p> <p>22 Q. Correct.</p> <p>23 A. No.</p> <p>24 MR. HOFFMAN: Karl, we've been going about</p> <p>25 an hour. If we can take a five-minute -- just</p>
09:55:11-09:56:01 Page 51	09:57:07-10:23:23 Page 53
<p>1 say about the stratagems?</p> <p>2 A. I do not remember.</p> <p>3 Q. And do you recall anything specifically that</p> <p>4 Mr. Pongrace told you about Keep the Promise -- the Keep</p> <p>5 the Promise legislation?</p> <p>6 A. Just his opinion that there was a good chance</p> <p>7 that it was going to pass during that legislative session.</p> <p>8 Q. And at this meeting where he talked about the</p> <p>9 Keep the Promise legislation, there was also</p> <p>10 representatives of Salt River?</p> <p>11 A. Correct.</p> <p>12 Q. And representatives of the Governor's Office?</p> <p>13 A. Yes.</p> <p>14 Q. And there were at least one representative from</p> <p>15 the Arizona Attorney General's Office?</p> <p>16 A. At one meeting.</p> <p>17 Q. And -- and that was at the second --</p> <p>18 A. Well, in addition to myself.</p> <p>19 Q. Right. In addition to yourself, there was one --</p> <p>20 one other person?</p> <p>21 A. Yeah. Mr. Tryon was at the May 13th meeting, but</p> <p>22 he was not at either of the other meetings.</p> <p>23 Q. Okay. And so was there anyone else from the</p> <p>24 Attorney General's Office --</p> <p>25 A. No.</p>	<p>1 five-minute -- a short five-minute break?</p> <p>2 MR. TILLEMAN: Sure. Let's take 10 minutes.</p> <p>3 You bet.</p> <p>4 THE VIDEOGRAPHER: We are off the record.</p> <p>5 The time on the video monitor is 9:56 a.m. And this ends</p> <p>6 disk one.</p> <p>7 (A recess ensued.)</p> <p>8 THE VIDEOGRAPHER: We are on the record.</p> <p>9 The time on the video monitor is 10:22. This begins disk</p> <p>10 two.</p> <p>11 THE WITNESS: Mr. Tilleman, before you go</p> <p>12 on --</p> <p>13 BY MR. TILLEMAN:</p> <p>14 Q. Yes.</p> <p>15 A. -- I need to correct my testimony.</p> <p>16 Q. Please. Thank you. Go ahead.</p> <p>17 A. During the break, I read page 104 and 10- -- 105</p> <p>18 of the deposition testimony of Daniel Bergin. This would</p> <p>19 be Exhibit 4. And as I read it, my memory was refreshed</p> <p>20 with regard to the meeting which Mr. Bergin stated took</p> <p>21 place with members of Salt River -- with representatives</p> <p>22 of the Salt River and that I was in attendance. As I read</p> <p>23 further on, he -- he mentioned something which triggered</p> <p>24 my memory of that -- of that meeting.</p> <p>25 Q. And what was it that you --</p>

10:23:28-10:25:21 Page 54	10:26:33-10:27:43 Page 56
<p>1 A. Okay.</p> <p>2 Q. -- read?</p> <p>3 A. This was a meeting at the Governor's Office that</p> <p>4 was requested by the Governor's Office. This would be in,</p> <p>5 I believe, January, which was shortly after The Tohono</p> <p>6 O'odham Nation announced that they were beginning</p> <p>7 construction on the casino. And it was -- I'm not really</p> <p>8 sure which tribe it was. It was either Salt or Gila. I</p> <p>9 believe it was Salt River that requested the meeting, and</p> <p>10 the Governor's Office requested that Mr. Bergin attend as</p> <p>11 the director of the Department of Gaming, and he took me</p> <p>12 along. The reason that I remember it now, as -- as I read</p> <p>13 further, Mr. Bergin said that the tribe was urging that</p> <p>14 the State bring an arbitration, which would be under</p> <p>15 Section 15 of the compact, in order to try and address the</p> <p>16 West Valley casino. And I do remember that being</p> <p>17 mentioned by one of the attorneys for Salt, although I</p> <p>18 don't remember what -- I don't think I ever knew what his</p> <p>19 name was, to tell you the truth. And I also remember this</p> <p>20 particular attorney producing plats showing the county</p> <p>21 islands that were in the -- in and around the -- the</p> <p>22 Phoenix area. Once again, the tenor of the meeting was</p> <p>23 the tribe pointing out the -- the parade of horrors</p> <p>24 which would accrue if the West Valley casino was built and</p> <p>25 urging the State to take action in order to prevent them</p>	<p>1 Q. No other officials from the -- that Governor's</p> <p>2 Office you can recall at that meeting?</p> <p>3 A. No.</p> <p>4 Q. What about other State officials from the AG's</p> <p>5 department or ADOG?</p> <p>6 A. There was no one there from the Attorney</p> <p>7 General's Office other than myself.</p> <p>8 Q. Uh-huh.</p> <p>9 A. And Mr. Bergin had asked me to attend after he'd</p> <p>10 been directed to be there by the Governor's Office.</p> <p>11 Q. In Mr. -- in Director Bergin's testimony, he said</p> <p>12 that this meeting occurred in January 2014. And I'm</p> <p>13 wondering if that's an accurate date.</p> <p>14 A. I wouldn't believe so. I -- I believe it was in</p> <p>15 December of 2014 that we first started seeing ads in</p> <p>16 the -- or, pardon me, articles in the newspaper with</p> <p>17 regard to Tohono O'odham announcing the construction of</p> <p>18 the casino, so I would assume that this meeting was in</p> <p>19 January of 2015.</p> <p>20 Q. And what else besides plats was discussed with</p> <p>21 Salt?</p> <p>22 A. That's -- You know, I -- I had forgotten it</p> <p>23 completely, but then when I read about the -- the</p> <p>24 arbitration being urged, it suddenly jogged my memory.</p> <p>25 And the only other thing I remember about the meeting was</p>
10:25:25-10:26:33 Page 55	10:27:46-10:28:42 Page 57
<p>1 from opening up an -- an unauthorized casino in the West</p> <p>2 Valley. I was present at that meeting.</p> <p>3 Q. Thanks, Mr. Banan.</p> <p>4 Who -- who else was present at the meeting?</p> <p>5 A. Dan and I were there. There were other attorneys</p> <p>6 there. I'd say there was maybe a total of six people.</p> <p>7 And -- and quite frankly, I didn't -- I don't -- I didn't</p> <p>8 know any of those attorneys.</p> <p>9 Q. Do you know whether they were all attorneys?</p> <p>10 A. I do not know. I think -- in fact, I think it</p> <p>11 was a mix of attorneys and tribal members that were there.</p> <p>12 Q. Did you recognize any of the tribe leaders or</p> <p>13 attorneys at subsequent meetings that you had with Gila</p> <p>14 and Salt?</p> <p>15 A. You know, I do not.</p> <p>16 Q. And --</p> <p>17 A. I've only been practicing here in Phoenix for</p> <p>18 four and a half years, so I -- I'm not familiar with all</p> <p>19 the players.</p> <p>20 Q. Do you remember what else was -- So strike that.</p> <p>21 Who from the Governor's Office was present</p> <p>22 at the meeting?</p> <p>23 A. I believe it was Mike Liburdi, the general</p> <p>24 counsel for the Governor. And I can't remember anyone</p> <p>25 else.</p>	<p>1 the general tenor was that the tribe was trying to impress</p> <p>2 the State that something had to be done about this -- this</p> <p>3 situation. And I do remember all of the -- the plats that</p> <p>4 had been rolled up, you know, showing there were 200</p> <p>5 county islands in and around the -- the Phoenix metro</p> <p>6 area, and they're just waiting to do it again, that kind</p> <p>7 of thing. So . . .</p> <p>8 Q. And what did you -- what was discussed about the</p> <p>9 arbitration?</p> <p>10 A. They had urged that the State or the Department</p> <p>11 of Gaming bring an arbitration under Section 15 of the</p> <p>12 compact in order to try and stop the -- the West Valley</p> <p>13 casino.</p> <p>14 Q. And what was -- what was your response?</p> <p>15 MR. HOFFMAN: And objection. Form,</p> <p>16 foundation.</p> <p>17 THE WITNESS: I just sat silently because I</p> <p>18 knew that wasn't going anywhere.</p> <p>19 BY MR. TILLEMANN:</p> <p>20 Q. And why did you know it wasn't going anywhere?</p> <p>21 MR. HOFFMAN: Hold on. Objection.</p> <p>22 I'm going to instruct you not to answer to</p> <p>23 the extent this implicates attorney-client communications</p> <p>24 between you and Director Bergin.</p> <p>25 MR. TILLEMANN: I think that I'm entitled to</p>

<p>10:28:44-10:29:46 Page 58</p> <p>1 ask -- I'm not asking about communications with 2 Director Bergin. 3 BY MR. TILLEMAN: 4 Q. You said that arbitration was discussed in the 5 meeting. You said it wasn't going anywhere. And I'm 6 asking, how did you know that? 7 A. It wasn't discussed by me. It was the tribe that 8 brought it up and urged that it be done. I listened 9 quietly to it. But in my mind, I knew that the viability 10 of an arbitration, given the facts of the case, were -- 11 were virtually nil. 12 Q. And how did you know about it? What was -- what 13 were the facts? 14 MR. HOFFMAN: Again, to the extent you can 15 answer that don't -- that does not implicate 16 attorney-client communication between you and 17 Director Bergin. 18 MR. TILLEMAN: Corr- -- correct. 19 THE WITNESS: My -- my thinking on it was 20 that arbitrations are limited by the terms of Section 15 21 to interpretation of the compact and breaches of the 22 compact. I already knew from the 2011 litigation, where 23 the judge had dismissed the fraud claims, that they were 24 not matters of a compact breach but a matter of compact 25 formation and, therefore, did not fall within the ambit of</p>	<p>10:30:48-10:31:49 Page 60</p> <p>1 A. I -- 2 MR. HOFFMAN: Objection. Form, foundation. 3 THE WITNESS: I do not recall saying 4 anything with regard to urging the arbitration, or anybody 5 else, for that matter. 6 BY MR. TILLEMAN: 7 Q. Do you recall anybody at that meeting taking 8 notes? 9 A. I'm -- I'm sure I must have taken some notes, but 10 I -- I no longer have them. They would have been brief. 11 Once again, this was just a -- the tribe urging the State 12 to take action quickly to help them out. 13 Q. Do you recall anyone at the later three meetings 14 you've referenced where Gila was also in attendance -- do 15 you recall anyone at that meeting taking notes? 16 MR. HOFFMAN: Objection. Form, foundation. 17 THE WITNESS: Well, I can only speak for 18 myself. I did take notes. After I had briefed 19 Director Bergin -- They were brief notes, less than half 20 a page. After I had briefed Director Bergin on them, I 21 destroyed the notes. They were of no further use. 22 BY MR. TILLEMAN: 23 Q. At this point, did you have a litigation hold 24 concerning any -- 25 A. No. We'd -- we had no idea there was any</p>
<p>10:29:50-10:30:45 Page 59</p> <p>1 Section 15 arbitrations. 2 BY MR. TILLEMAN: 3 Q. And tell me -- again, I don't -- I'm not 4 interested in attorney-client communications. But with 5 the subject having been discussed at the meeting, what was 6 the difference between formation and breach or 7 interpretation of the compact? 8 MR. HOFFMAN: Objection. You're just now 9 asking him for a legal opinion. To the extent you -- you 10 want to ask him about what was communicated about the 11 arbitration at the -- at the meeting, I'm happy -- he -- 12 he can answer those questions. But I'm not going -- I'm 13 going to instruct him not to answer in terms of any 14 further questions regarding, you know, what his legal 15 conclusion as an attorney for the attorney -- for the 16 Arizona Department of Gaming were. 17 BY MR. TILLEMAN: 18 Q. What was -- what was communicated to Salt River 19 at the meeting, Mr. Banan? 20 A. With regard to their urging an arbitration? 21 Q. Correct. 22 A. Nothing. I -- I sat quietly and so did Dan. 23 Q. And did anyone from the State communicate 24 anything to the Salt about the arbitration? "It's not 25 going anywhere"? "We'll look into it, thank you"?</p>	<p>10:31:51-10:32:48 Page 61</p> <p>1 litigation pending. 2 Q. Did you anticipate litigation at that point? 3 MR. HOFFMAN: Objection. Form, foundation. 4 This calls for a legal conclusion. 5 THE WITNESS: I wasn't anticipating. I was 6 investigating the possibilities, but there was no -- the 7 suit hadn't been filed by Tohono O'odham, and all that had 8 happened was that they had brought the issue to the 9 surface by announcing "We're building our casino." 10 BY MR. TILLEMAN: 11 Q. Were any of these meetings you've discussed set 12 up by calendar invite? 13 A. Calendar invite? 14 Q. The Outlook calendar invite, pop it on your 15 electronic computer. 16 A. Oh. I don't -- I don't believe so. I believe I 17 was informed that I had a meeting to attend at 18 such-and-such a time. And that was it. 19 Q. In each instance? 20 A. Yeah, I believe so. The three instances that we 21 were talking about, yeah. 22 Q. And the same with the State's -- with the initial 23 meeting with Salt? That was done by -- 24 A. Yeah. I mean, Director Bergin would just say to 25 me, you know, "We've got a meeting. I'd like you to go</p>

<p>10:32:50-10:33:48 Page 62</p> <p>1 with me." 2 Q. At the meeting that you had with Salt and Gila, 3 was there any discussion about not taking notes or 4 communicating in writing? 5 A. No. 6 MR. HOFFMAN: Objection. Form, foundation. 7 THE WITNESS: No. 8 BY MR. TILLEMANN: 9 Q. And in terms of prior to the meeting, it was 10 always communicated to you how the meeting would occur by 11 telephone? 12 A. Or in person. 13 Q. Never in writing? 14 A. No. 15 Q. And in terms of communications with Mr. Pongrace, 16 was Mr. Godfrey at each of the three meetings you've 17 discussed? I think two in May and perhaps one in June. 18 A. I know he was at the first two meetings at Osborn 19 Maledon. I do not recall whether he was at the third 20 meeting, which took place at Snell, Wilmer. 21 Q. And Mr. -- Mr. Pongrace has come out to Phoenix 22 three times during the May and June time periods -- 23 MR. HOFFMAN: Objection. Form, foundation. 24 BY MR. TILLEMANN: 25 Q. -- to meet with you?</p>	<p>10:35:12-10:36:07 Page 64</p> <p>1 from ADG may have had with some other state official. 2 MR. TILLEMANN: And, Matt, just to set the 3 foundation, we don't have a calendar invite, we don't have 4 an email, we don't have a post-meeting email, we don't 5 have a post-meeting summary, we don't have anyone's notes. 6 All we have is one email. And so I am trying to figure 7 out what communications there were concerning these 8 meetings because all we have so far is just a single 9 email, so I am trying to figure out what happened 10 concerning the communications that it had -- that the 11 State had with these two tribes. I am trying to set the 12 foundation for -- for those -- what's the -- what were the 13 substance of those -- 14 MR. HOFFMAN: You can ask him about 15 communications between ADG and -- and these tribes. Go 16 for it. Otherwise, I'm going to instruct him not to 17 answer. It's beyond the scope of the deposition notice. 18 BY MR. TILLEMANN: 19 Q. Are you following that instruction, Mr. Banan? 20 A. I -- I can't even remember what the question is 21 now. 22 Q. I'm talking about internal discussions at the 23 State. Do you recall any other meetings that were had 24 from the State concerning these communications you'd had 25 with Salt and Gila?</p>
<p>10:33:48-10:35:09 Page 63</p> <p>1 A. Mr. Pongrace was at the meetings. I don't know 2 if he came out from anywhere. 3 Q. Okay. So the notes you took at these meetings 4 you destroyed after you briefed Director Bergin? 5 A. That's true. They were very brief because, as I 6 said, most of these meetings, it was basically an -- an 7 urging by the tribe that the State do something, and, you 8 know, what was -- a lot of what was being urged was 9 clearly things that the Department of Gaming was not going 10 to do. 11 Q. And I -- I don't want to know the substance, but 12 were there communications with other officials at the 13 State concerning the meetings you had with Gila and Salt 14 at all? Were there ever any discussions -- and I don't 15 want to know substance, but I do want to know whether they 16 occurred, whether you had any -- any -- besides the 17 meeting you've talked about with Director -- the meetings 18 with Director Bergin, were there any other meetings you 19 had concerning the -- the Salt River, Gila River -- 20 meetings internally at the State? 21 MR. HOFFMAN: I'm going to instruct him not 22 to answer. This goes beyond the scope of the deposition 23 notice. You -- The deposition notice is about his 24 communi- -- ADG's communications with the -- the tribes. 25 It does not ask about the communications that somebody</p>	<p>10:36:08-10:37:15 Page 65</p> <p>1 MR. HOFFMAN: I'm going to instruct you not 2 to answer. 3 THE WITNESS: I'm afraid I can't answer. 4 BY MR. TILLEMANN: 5 Q. Okay. I asked about the reason you personally 6 signed the Common Interest Agreement that we've reviewed. 7 And I don't want to put words in your mouth, but I 8 thought -- I think it was something like you wanted to 9 come under the scope of the agreement. Is that -- is that 10 accurate? 11 MR. HOFFMAN: Objection. Form, foundation. 12 THE WITNESS: Yeah, that's -- that's 13 reasonably accurate, sure. 14 BY MR. TILLEMANN: 15 Q. If you -- if you never read the agreement and 16 don't know what it provides, why did you want to come 17 within the scope of the agreement? 18 A. Well, I -- I -- I mean, I know what a Common 19 Interest Agreement is. I know what it purports to do. 20 And I knew that the signatories -- at least the two other 21 tribes had both been defrauded by Tohono O'odham just as 22 the State and the voters had been defrauded. It seemed to 23 me we had a common legal interest and that any 24 communications that I had with them, any information that 25 I could glean from them, given their experience in the</p>

<p>10:37:19-10:38:13 Page 66</p> <p>1 2011 information, would be information that I would not 2 like to be communicated to The Tohono O'odham Nation. 3 Q. And vice versa, that you also wanted to be able 4 to communicate with them in terms of what the department 5 was doing without having that disclosed to The Tohono 6 O'odham Nation? 7 MR. HOFFMAN: Objection. Form, foundation. 8 THE WITNESS: Well, we're pretty much an 9 open book. I wasn't so worried about that. It was the 10 tribes that seemed to be the most interested in -- in 11 keeping things secret. 12 BY MR. TILLEMAN: 13 Q. And you -- you wanted to come within the scope of 14 keeping your communications with Gila and Salt secret? 15 MR. HOFFMAN: Objection. Form, foundation. 16 THE WITNESS: That's the point of the Common 17 Interest Agreement. 18 BY MR. TILLEMAN: 19 Q. Okay. Did that -- did that bother you at all -- 20 MR. HOFFMAN: Objection. Form, foundation. 21 BY MR. TILLEMAN: 22 Q. -- having a Common Interest Agreement with two 23 regulated entities concerning another entity given that 24 the department wants to be an open book? 25 MR. HOFFMAN: Objection. Form, foundation.</p>	<p>10:39:19-10:40:12 Page 68</p> <p>1 you can answer that without disclosing attorney-client 2 communications or attorney work product, you can answer. 3 THE WITNESS: Well, just in general, the 4 evidence that had been presented in the 2011 litigation. 5 BY MR. TILLEMAN: 6 Q. Did you consider anything else in entering into 7 the Common Interest Agreement besides the evidence in the 8 2011 litigation? 9 A. Well, actually, I don't understand that question. 10 Can you rephrase that for me a little? 11 Q. Yeah. 12 Any -- was there any other evidence you 13 relied upon -- other than what you learned through the 14 litigation, that you relied on to enter into the Common 15 Interest Agreement? 16 MR. HOFFMAN: Object- -- objection. Form, 17 foundation. 18 THE WITNESS: No. I think that was it. 19 BY MR. TILLEMAN: 20 Q. So the -- the initial -- Let's go back. 21 The initial meeting with Salt, did you -- 22 you prepared notes on that meeting as well? 23 A. I don't recall if I did. It's generally my habit 24 to make some notes of anything that's important that takes 25 place. That's why the notes that I do remember from the</p>
<p>10:38:14-10:39:17 Page 67</p> <p>1 THE WITNESS: I considered it having a 2 Common Interest Agreement with two tribes who had been 3 defrauded and had been involved in a lawsuit, just as the 4 State had been back in 2011. 5 BY MR. TILLEMAN: 6 Q. Mr. Banan, if you say that you were interested in 7 joining with them because they had been defrauded, how did 8 you come to that conclusion? 9 MR. HOFFMAN: Objection. 10 Again, this sounds like it's -- it's -- it's 11 calling for attorney-client communications and your -- and 12 your attorney work product, so to the extent it implicates 13 those communications or -- or attorney work product, I'm 14 going to instruct you not to answer. If you can answer 15 without implicating those things, you can. 16 BY MR. TILLEMAN: 17 Q. You said you signed this agreement and -- and -- 18 because -- without reviewing it because you knew that Salt 19 and Gila had been defrauded by The Tohono O'odham Nation. 20 That's your testimony? 21 A. Yeah, along with all the other tribes -- gaming 22 tribes in the state. 23 Q. Well, why -- And -- and my point is, how did you 24 come to that conclusion? 25 MR. HOFFMAN: Again, same instruction. If</p>	<p>10:40:16-10:41:05 Page 69</p> <p>1 Osborn Maledon meeting were brief. I didn't really get 2 anything of importance out of it other than a full-court 3 press by the tribes for the State to do something. 4 Q. Is it your practice after you brief 5 Director Bergin to destroy your notes? 6 A. Yeah -- 7 MR. HOFFMAN: Objection -- objection. Form, 8 foundation. 9 THE WITNESS: Yes, it is. 10 BY MR. TILLEMAN: 11 Q. Immediately? 12 A. As soon as I brief the director and I no longer 13 need them. 14 Q. So we have a meeting in January of 2015 with the 15 individuals you've said and Salt. We have three different 16 meetings, and there were about six or seven lawyers 17 involved in that -- in the initial meeting with -- with 18 Salt or -- 19 A. I'm not sure -- 20 MR. HOFFMAN: Object -- objection. Form, 21 foundation. 22 THE WITNESS: I'm not sure that they were 23 all lawyers. 24 BY MR. TILLEMAN: 25 Q. Six or seven people there?</p>

<p>10:41:06-10:42:26 Page 70</p> <p>1 A. Yeah.</p> <p>2 Q. We have three subsequent meetings you've</p> <p>3 described, I think, one of them with about 12 people</p> <p>4 there, including lawyers and other officials?</p> <p>5 A. Correct.</p> <p>6 Q. And -- and there's no -- you -- you have no</p> <p>7 record of anything that happened at any of those four</p> <p>8 meetings other than the email that's marked as Exhibit 2</p> <p>9 to your deposition?</p> <p>10 A. That's correct.</p> <p>11 Q. Mr. Banan, how do you keep track of your own</p> <p>12 appointments? Do you have a -- do you have an electronic</p> <p>13 calendar?</p> <p>14 A. I do not. Well, I mean, it's available to me,</p> <p>15 one of those Microsoft products. But I'm 65 years old.</p> <p>16 I'm not very good with the -- the electronic devices that</p> <p>17 are provided.</p> <p>18 Q. So do you keep track of it in a -- in a calendar?</p> <p>19 A. If it's something in the distant future, yes.</p> <p>20 Otherwise, I'm usually told on a -- on very short notice</p> <p>21 where I have to go, where I have to be.</p> <p>22 Q. Okay. And, again, with respect to any of these</p> <p>23 meetings, you don't have any written or electronic</p> <p>24 calendar invite confirming the meeting?</p> <p>25 A. No.</p>	<p>10:43:46-10:45:10 Page 72</p> <p>1 Q. He was anxious to give you all the information</p> <p>2 that he could, but he never gave you any response --</p> <p>3 MR. HOFFMAN: Obj- --</p> <p>4 BY MR. TILLEMANN:</p> <p>5 Q. -- to your question?</p> <p>6 MR. HOFFMAN: Objection. Form, foundation.</p> <p>7 THE WITNESS: I -- I -- I don't know if he</p> <p>8 was anxious or not. He had -- had said that they had done</p> <p>9 research and that I didn't have to worry about that, that</p> <p>10 the client claim was not viable. So at a later date after</p> <p>11 the meeting, I asked him for his research. And he never</p> <p>12 responded, either verbally or in writing, email.</p> <p>13 BY MR. TILLEMANN:</p> <p>14 Q. Mr. Banan, I'm handing you what's been marked as</p> <p>15 Exhibit 5 to your deposition.</p> <p>16 (Deposition Exhibit 5 was marked for</p> <p>17 identification.)</p> <p>18 BY MR. TILLEMANN:</p> <p>19 Q. Directin -- Director Bergin, I've handed you</p> <p>20 what's been marked as Exhibit 5 to your deposition.</p> <p>21 A. Roger, Roger Banan.</p> <p>22 Q. Excuse me, Roger. Yes.</p> <p>23 MR. TILLEMANN: I notice that Mr. Hoffman</p> <p>24 didn't object to that statement with "Form and</p> <p>25 foundation."</p>
<p>10:42:27-10:43:45 Page 71</p> <p>1 Q. In your -- your email of May 27, 2015, to</p> <p>2 Mr. Pongrace --</p> <p>3 A. Yes.</p> <p>4 Q. -- the second line there, it says, "In addition,</p> <p>5 we are somewhat worried that the vendor letters -- letters</p> <p>6 will prompt Waxman/TON to fund a vendor suit against ADG</p> <p>7 in order to get a court declaration that the department's</p> <p>8 conduct is improper, i.e. a back door order for ADG to</p> <p>9 stop interfering with Glendale casino operations or</p> <p>10 something like that." Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Who is the "we" you're referring to?</p> <p>13 A. Well, I think that's the editorial "we," the</p> <p>14 Department of Gaming.</p> <p>15 Q. Did the "we" include Ms. -- the Governor's</p> <p>16 Office?</p> <p>17 MR. HOFFMAN: Objection. Form, foundation.</p> <p>18 THE WITNESS: No, I don't -- I never -- I</p> <p>19 never had any discussions with anybody about this. This</p> <p>20 was just brought up once at the meeting, and then I wanted</p> <p>21 to find out if Pongrace actually had some research on it.</p> <p>22 BY MR. TILLEMANN:</p> <p>23 Q. Do you recall -- and he didn't -- he never</p> <p>24 responded?</p> <p>25 A. No, he did not.</p>	<p>10:45:10-10:46:28 Page 73</p> <p>1 MR. HOFFMAN: I was reading the document.</p> <p>2 BY MR. TILLEMANN:</p> <p>3 Q. Mr. Banan, I've handed you what's been marked as</p> <p>4 Exhibit 5. My understanding that what's been blacked out</p> <p>5 has been blacked out on common-interest grounds.</p> <p>6 A. I wouldn't know.</p> <p>7 Q. And so do you recall receiving an inquiry from</p> <p>8 Andy Anderson that forwarded on a question from Amanda</p> <p>9 Jacinto regarding employment with TO at the West Valley</p> <p>10 Resort?</p> <p>11 A. I -- I do not recall it, no.</p> <p>12 Q. Who is Amanda Jacinto?</p> <p>13 A. Amanda Jacinto is the public affairs person --</p> <p>14 or, public relations person for the Department of Gaming.</p> <p>15 MR. TILLEMANN: Okay. If I'm right, and I</p> <p>16 think I am, that this was blacked out on common interest,</p> <p>17 I'd like to see if we -- you can somehow get a copy of</p> <p>18 that today.</p> <p>19 MR. HOFFMAN: Well, you -- you haven't</p> <p>20 raised this before today, Karl. So this is -- I've --</p> <p>21 I've got to go back and look into this.</p> <p>22 MR. TILLEMANN: That's fine. I -- I -- I was</p> <p>23 just advising myself. And so that's why I want to make</p> <p>24 sure we get it on the record. Okay?</p> <p>25 MR. HOFFMAN: Well, I can -- I can look -- I</p>

<p>10:46:29-10:47:29 Page 74</p> <p>1 can look into this at a break. That's all I can promise 2 you at this point. 3 MR. TILLEMAN: That's fine. 4 MR. HOFFMAN: This was not raised before 5 just now. 6 MR. TILLEMAN: I'm not agreeing or 7 disagreeing. We'll talk about that on our -- on our line 8 as well. 9 BY MR. TILLEMAN: 10 Q. What else, Mr. Banan, was talked about at any of 11 the three meetings between Gila and Salt and yourself 12 in -- in any of those three meetings: twice at Osborn 13 Maledon and once at Snell & Wilmer? 14 MR. HOFFMAN: Objection. Form and 15 foundation. This has been asked and answered. 16 MR. TILLEMAN: I'm trying to exhaust the 17 area of inquiry, Matt. 18 THE WITNESS: Yeah, I -- I think I've 19 covered everything that I can remember. 20 BY MR. TILLEMAN: 21 Q. And in terms of follow-up telephone 22 communications with any member of Gila or Salt concerning 23 the West Valley Resort, did any such telephone 24 conversations occur, let's just say, at any time? 25 A. I made none.</p>	<p>10:48:45-10:49:54 Page 76</p> <p>1 ask him what he communicated about ADG's position, I 2 suppose he could answer that, but I'm not sure he could 3 answer what -- about the State's position without 4 implicating possibly attorney-client communications. So I 5 don't know. If you want to rephrase -- 6 MR. TILLEMAN: So I just want to -- So, 7 Matt, your position is that if another state agency 8 besides the -- the State Department of Gaming -- for 9 example, the Governor's Office or the AG -- had a 10 communication with Salt or Gila, you're saying that that 11 would fall outside the scope of what ADG was communicating 12 concerning -- and under this common interest? 13 MR. HOFFMAN: I'm saying that there's -- 14 I'm aware of no order by Judge Campbell that there isn't a 15 common interest between the Governor's Office and -- and 16 ADG. Now, he's -- he expressed the order of what he did 17 about whether there's a common interest between the 18 Department of Gaming and the two tribes, but my -- your -- 19 your question asks for -- or, potentially asks for 20 communications between ADG lawyers, governor lawyers, and 21 that would be either attorney-client privilege or 22 certainly subject to a joint-defense or common-interest 23 privilege. 24 MR. TILLEMAN: And let me -- let me make 25 clear what I'm asking.</p>
<p>10:47:30-10:48:43 Page 75</p> <p>1 Q. And none were made to -- none -- 2 A. No, I didn't receive any either, especially after 3 the litigation had been begun on June 22nd. That was 4 pretty much the end of -- of communications, as I recall, 5 with -- or, even requests for meetings, anything with 6 regard to the two other tribes. 7 Q. And you -- I talked about telephone calls, so 8 now I'm going to talk about meetings. So the -- the four 9 meetings that you recall having with Salt, Gila -- Salt 10 and Gila concerning the West Valley Resort are those that 11 you've identified to this point in your deposition? 12 A. Yes. 13 And I want to just clarify that first 14 meeting at the Governor's Office -- where we were called 15 to at the Governor's Office, I'm really not sure whether 16 both Salt and Gila were present or whether it was just 17 Salt that was there or just Gila, for that matter. As I 18 said, I don't know the -- the lawyers for the -- for the 19 tribes. 20 Q. In terms of the State's position on the West 21 Valley Resort, what did you tell Salt or Gila or whoever 22 you were meeting with in that January 2015 time frame 23 meeting? 24 MR. HOFFMAN: Objection. Form, foundation. 25 You asked him about the State's position. If you want to</p>	<p>10:49:54-10:50:49 Page 77</p> <p>1 BY MR. TILLEMAN: 2 Q. I'm asking, are you aware whether any other State 3 official, besides yourself, had communications with Salt 4 and Gila concerning the West Valley Resort? 5 MR. HOFFMAN: And, again, if you only 6 learned that through an attorney or through a privileged 7 communication, I would instruct you not to answer. If -- 8 if you can answer otherwise, go ahead. 9 BY MR. TILLEMAN: 10 Q. You're going to follow your counsel's 11 instruction? 12 MR. HOFFMAN: He's going to -- 13 THE WITNESS: Let me think about it for just 14 a second here, because -- Any other state officials? 15 That is to say Governor's Office -- am I aware that they 16 had any communications with either Salt or Gila? 17 BY MR. TILLEMAN: 18 Q. Concerning the West Valley Resort. 19 MR. HOFFMAN: This is also -- I'm also 20 going to object and instruct him not to answer on the 21 ground this is beyond the scope of the deposition notice. 22 The deposition notice asked for communications between the 23 tribal officials -- or, tribal representatives and the -- 24 and the Arizona Department of Gaming, not about -- not -- 25 not communication between the State and the other tribes.</p>

<p>10:50:51-10:51:44 Page 78</p> <p>1 So on that ground, I'm going to instruct him not to</p> <p>2 answer.</p> <p>3 BY MR. TILLEMANN:</p> <p>4 Q. Just to make sure we're clear on where we</p> <p>5 disagree, I would consider communications that another</p> <p>6 State official had with one of these tribes concerning the</p> <p>7 West Valley Resort over which the ADG had direct</p> <p>8 regulatory authority having communications on behalf of</p> <p>9 ADG. That's exactly right. And if -- if -- I understand</p> <p>10 Mr. Hoffman's objection saying don't answer that on</p> <p>11 privilege grounds.</p> <p>12 MR. HOFFMAN: Karl, I'm -- I'm sorry. I'm</p> <p>13 not trying to be difficult. I'm not sure I understand</p> <p>14 your question. Are you asking about communications that</p> <p>15 you -- you think the State may have had on behalf of ADG?</p> <p>16 MR. TILLEMANN: I don't know why the State</p> <p>17 would be having discussions with these two tribes</p> <p>18 concerning the West Valley Resort other than what</p> <p>19 necessarily would include ADG --</p> <p>20 MR. HOFFMAN: Well, you're not --</p> <p>21 MR. TILLEMANN: -- correct.</p> <p>22 MR. HOFFMAN: -- here to testify. But how</p> <p>23 about this? How about this? Why don't we go off the</p> <p>24 record a minute, let me confer with my -- my client, and</p> <p>25 then we can -- maybe we can -- there's an easy way around</p>	<p>11:04:15-11:05:16 Page 80</p> <p>1 BY MR. TILLEMANN:</p> <p>2 Q. Do you recall any communications they said --</p> <p>3 they -- they discussed about having directly with any</p> <p>4 member of Congress, state or house member, federal --</p> <p>5 MR. HOFFMAN: Objection. Form and</p> <p>6 foundation.</p> <p>7 THE WITNESS: Well, Mr. Pongrace discussed</p> <p>8 the legislation and he was talking as if he were a</p> <p>9 lobbyist, so I assumed that he was having some</p> <p>10 communications with somebody in Congress about the status</p> <p>11 of this Keep the Promise Act, but I don't recall any</p> <p>12 specific names or any description of what he was doing.</p> <p>13 BY MR. TILLEMANN:</p> <p>14 Q. Did he discuss his communications with Senator</p> <p>15 McCain?</p> <p>16 MR. HOFFMAN: Objection. Form, foundation.</p> <p>17 THE WITNESS: No, he did not.</p> <p>18 BY MR. TILLEMANN:</p> <p>19 Q. Did Mr. Pongrace have you review any draft</p> <p>20 correspondence that was sent to any member of Congress</p> <p>21 with respect to the Keep the Promise Act?</p> <p>22 A. No.</p> <p>23 MR. HOFFMAN: Object -- objection. Form,</p> <p>24 foundation.</p> <p>25 THE WITNESS: No, he did not.</p>
<p>10:51:45-11:04:14 Page 79</p> <p>1 this.</p> <p>2 MR. TILLEMANN: I think that's fine.</p> <p>3 THE VIDEOGRAPHER: We are off the record.</p> <p>4 The time on the video monitor is 10:51.</p> <p>5 (A recess ensued.)</p> <p>6 THE VIDEOGRAPHER: We are on the record.</p> <p>7 The time on the video monitor is 11:03.</p> <p>8 BY MR. TILLEMANN:</p> <p>9 Q. Mr. Banan --</p> <p>10 MR. HOFFMAN: Why don't you go ahead and --</p> <p>11 do you want to try your question again?</p> <p>12 BY MR. TILLEMANN:</p> <p>13 Q. Mr. Banan, my question is whether you're aware of</p> <p>14 any communication any other state official besides</p> <p>15 yourself had with Salt or Gila concerning the West Valley</p> <p>16 Resort.</p> <p>17 A. I am not aware.</p> <p>18 Q. Okay. Going back to Mr. -- the discussions with</p> <p>19 Mr. Pongrace, and seeing if a couple things help refresh</p> <p>20 your recollection, do you recall Mr. Pongrace discussing</p> <p>21 their efforts with respect to the CBO, the Congressional</p> <p>22 Budget Office?</p> <p>23 MR. HOFFMAN: Objection. Form, foundation.</p> <p>24 THE WITNESS: I do not.</p> <p>25</p>	<p>11:05:17-11:06:16 Page 81</p> <p>1 BY MR. TILLEMANN:</p> <p>2 Q. And so the -- the Department of Gaming didn't</p> <p>3 provide any input on any correspondence or communications</p> <p>4 that Gila or Salt had with any federal legislator</p> <p>5 concerning the Keep the Promise Act?</p> <p>6 MR. HOFFMAN: Objection. Form.</p> <p>7 THE WITNESS: Not to my knowledge.</p> <p>8 BY MR. TILLEMANN:</p> <p>9 Q. You didn't provide that -- did you provide any</p> <p>10 specific input at these meetings that -- that occurred</p> <p>11 with respect -- with respect to the Congressional Budget</p> <p>12 Office?</p> <p>13 MR. HOFFMAN: Objection. Form.</p> <p>14 THE WITNESS: That's the first time I've</p> <p>15 heard about it.</p> <p>16 BY MR. TILLEMANN:</p> <p>17 Q. Did Mr. Pongrace encourage the Department of</p> <p>18 Gaming to communicate with the CBO concerning the Keep the</p> <p>19 Promise Act?</p> <p>20 A. No, not that I recall.</p> <p>21 Q. And did he -- did Mr. Pongrace discuss the State</p> <p>22 drafting any correspondence to any federal legislators</p> <p>23 concerning the Keep the Promise Act?</p> <p>24 A. I do not know.</p> <p>25 Q. He did not make that request of you?</p>

<p>11:06:20-11:08:41 Page 82</p> <p>1 A. No.</p> <p>2 Q. Director Bergin, I'm handing you what's been</p> <p>3 marked as Exhibit 6.</p> <p>4 A. Roger Banan.</p> <p>5 MR. HOFFMAN: Roger Banan.</p> <p>6 MR. TILLEMAN: Mr. Roger . . . I saw that</p> <p>7 Matt caught that one.</p> <p>8 (Deposition Exhibit 6 was marked for</p> <p>9 identification.)</p> <p>10 BY MR. TILLEMAN:</p> <p>11 Q. Mr. Banan, let me know after you've reviewed</p> <p>12 Exhibit 6.</p> <p>13 A. I've had a chance to review it.</p> <p>14 Q. Did the Department of Gaming receive any input</p> <p>15 from any Indian tribe concerning this correspondence?</p> <p>16 A. No.</p> <p>17 Q. Did this particular correspondence or any draft</p> <p>18 of that come from any -- Salt River or Gila?</p> <p>19 A. No.</p> <p>20 Q. Has the Department of Gaming discussed the</p> <p>21 partial ratification theory with either the Salt or --</p> <p>22 Salt River or Gila River?</p> <p>23 MR. HOFFMAN: Objection. Form, foundation.</p> <p>24 THE WITNESS: I have not and I know of</p> <p>25 nobody that has.</p>	<p>11:11:00-11:12:16 Page 84</p> <p>1 A. Okay. Give me a chance to read it.</p> <p>2 Okay. I've had a chance to read it.</p> <p>3 Q. In the first full paragraph, you see the third</p> <p>4 line there where it says, "The sum total of Director</p> <p>5 Bergin's interactions with the tribes with respect to the</p> <p>6 West Valley Resort was covered in Director Bergin's</p> <p>7 30(b)(6) deposition, and Director Bergin himself had no</p> <p>8 further contact with any . . . tribes concerning the West</p> <p>9 Valley Resort." Do you see that sentence?</p> <p>10 A. I do.</p> <p>11 Q. And to the best of your knowledge, sir, is that</p> <p>12 accurate?</p> <p>13 MR. HOFFMAN: Hold on. Objection. I'm</p> <p>14 going to instruct the witness not to answer. This</p> <p>15 certainly calls for attorney-client communications between</p> <p>16 myself and -- and Mr. Banan or Director Bergin.</p> <p>17 MR. TILLEMAN: No.</p> <p>18 MR. HOFFMAN: So to the extent it calls for</p> <p>19 that, I'm going to instruct him not to answer.</p> <p>20 MR. TILLEMAN: No, no. That's not what I'm</p> <p>21 asking. The -- the deposition is about his knowledge of</p> <p>22 other communications that Director Bergin or anyone at ADG</p> <p>23 had. That's what I'm asking, Matt.</p> <p>24 BY MR. TILLEMAN:</p> <p>25 Q. And is there -- so is the sum total -- And what</p>
<p>11:08:41-11:10:57 Page 83</p> <p>1 BY MR. TILLEMAN:</p> <p>2 Q. Has the department communicated to Salt and</p> <p>3 river -- Salt River and Gila River concerning the</p> <p>4 positions it had taken other than what you've described in</p> <p>5 your deposition so far today, Mr. Banan?</p> <p>6 MR. HOFFMAN: Objection. Form, foundation.</p> <p>7 THE WITNESS: Yeah, I'm sorry, I didn't</p> <p>8 quite understand.</p> <p>9 BY MR. TILLEMAN:</p> <p>10 Q. I'm asking you about any other communications</p> <p>11 where the department shared its -- its legal theories or</p> <p>12 asked questions about legal theories other than what</p> <p>13 you've identified here?</p> <p>14 A. Oh, no.</p> <p>15 (Deposition Exhibit 7 was marked for</p> <p>16 identification.)</p> <p>17 BY MR. TILLEMAN:</p> <p>18 Q. Mr. Banan, I've handed -- handed you what's been</p> <p>19 marked as Exhibit 7 to your deposition --</p> <p>20 A. Yes.</p> <p>21 Q. -- communication between Mr. Hoffman and myself</p> <p>22 concerning your email -- your May 27th email. If you</p> <p>23 could just review that for me briefly. I'm specifically</p> <p>24 going to ask you about a couple of things that Mr. Hoffman</p> <p>25 said and ask for your -- your understanding.</p>	<p>11:12:17-11:13:31 Page 85</p> <p>1 I am asking is we've identified one communication here in</p> <p>2 this nonprivileged email. Is there -- are there any other</p> <p>3 communications, that you're aware of, that Director Bergin</p> <p>4 had with -- with Gila or Salt concerning the West Valley</p> <p>5 Resort?</p> <p>6 A. Other than that -- that first January meeting,</p> <p>7 no, I'm unaware of any communications.</p> <p>8 Q. And -- and I think that's the only meeting you've</p> <p>9 talked about, and I was wondering, is that the only</p> <p>10 communication he had with them concerning the West Valley</p> <p>11 Resort --</p> <p>12 A. That's the only one I know of.</p> <p>13 Q. -- that you're aware of?</p> <p>14 And then the next line says, "Indeed, ADG's</p> <p>15 interaction with Gila River, Salt River, or other entities</p> <p>16 ADG regulates with respect to the West Valley Resort</p> <p>17 amounts to a handful of meetings that were attended by</p> <p>18 Roger Banan, none of which were called or organized by</p> <p>19 ADG." Do you see that?</p> <p>20 A. Which paragraph is that in?</p> <p>21 Q. The next line, right in that same paragraph.</p> <p>22 A. Oh, okay. Which paragraph are we talking about?</p> <p>23 Q. Paragraph 1.</p> <p>24 A. One?</p> <p>25 Q. It's the fourth -- fifth line down, "Indeed."</p>

<p>11:13:33-11:15:23 Page 86</p> <p>1 A. Oh, "Indeed." I see it. Okay. 2 Yes, I see it. 3 Q. And I was wondering about other entities ADG 4 regulates. And so far, I don't think we've identified any 5 other Indian tribe that ADG met with other than Salt and 6 Gila. And my question is, is there any other regulated 7 tribe that Salt -- that the -- the Department of Gaming 8 met with? 9 A. Yeah, well, just the two or three meetings that 10 Tohono O'odham requested. 11 Q. And -- and no one other than TO? 12 A. No. 13 Q. And did ADG call or organize any of those four 14 meetings that you've discussed? 15 A. No. All of those meetings were at the request of 16 either the Governor's Office or the tribes. 17 Q. Do you recall whether Gary Bohnnee -- I believe 18 it's Bohnnee or Bohnnee -- from Salt River attended any 19 meetings that you were at concerning the West Valley 20 Resort? 21 A. I'm not familiar with that name. 22 Q. Did you take with you a copy of the Common 23 Interest Agreement from the meeting that you attended? 24 A. Take -- take it -- 25 Q. Personally.</p>	<p>11:16:34-11:18:04 Page 88</p> <p>1 one he's ever signed -- he's ever seen. 2 MR. HOFFMAN: I think he's already answered 3 your question. Now you're asking him about other Common 4 Interest Agreements he may have been involved with at some 5 point, and that's beyond the scope of the deposition 6 notice. 7 BY MR. TILLEMANN: 8 Q. And you're going to -- 9 MR. TILLEMANN: I disagree. 10 BY MR. TILLEMANN: 11 Q. You're going to follow your counsel's advice not 12 to answer that, Mr. Banan? 13 A. Yes, I am. 14 Q. Are you familiar with a person by the name of 15 Patti Alderson? 16 A. I am not. 17 Q. Tri-Advocates? 18 A. Oh, I -- the name Tri-Advocates rings a bell. 19 Q. And -- and what is it? 20 A. I think it's a lobbying firm. 21 Q. And who do they lobby on behalf of? 22 A. You know what? I can't remember. 23 MR. TILLEMANN: You know what I'm going to do 24 is -- Mr. Banan? I'm going to go ahead and take a break, 25 maybe, say, about 10 minutes.</p>
<p>11:15:25-11:16:32 Page 87</p> <p>1 A. I don't believe so. I believe that it was 2 provided to me later on -- a copy was. 3 Q. Mr. Banan, do you recall any other instance in 4 which ADG has had a Common Interest Agreement with a 5 regulated entity concerning the actions ADG was 6 contemplating about another regulated entity? 7 MR. HOFFMAN: Objection. Form, foundation. 8 THE WITNESS: I'm unaware of any -- any 9 other Common Interest Agreements except for the one in 10 issue here. 11 BY MR. TILLEMANN: 12 Q. Have you ever in any -- in your experience 13 regu- -- as an attorney representing regulated entities, 14 have you ever seen such a Common Interest Agreement 15 before? 16 MR. HOFFMAN: Objection. I think we're 17 going beyond the scope of the deposition notice. And I'm 18 going to instruct him not to answer. 19 BY MR. TILLEMANN: 20 Q. Are you going to follow that advice? 21 A. Of course. 22 MR. TILLEMANN: I would say, Matt, I disagree 23 with that, given what we've gone into in the -- in the 24 deposition so far where he reviewed the Common Interest 25 Agreement. I think I'm entitled to ask if that's the only</p>	<p>11:18:07-11:46:14 Page 89</p> <p>1 THE VIDEOGRAPHER: We are off the record. 2 The time on the video monitor is 11:17. This ends disk 3 two. 4 (A recess ensued.) 5 THE VIDEOGRAPHER: We are on the record. 6 The time on the video monitor is 11:45. This begins disk 7 three. 8 BY MR. TILLEMANN: 9 Q. Mr. Banan, with respect to any letter that you 10 authored or that you reviewed that was sent to The Tohono 11 O'odham Nation, did any draft of those letters -- were any 12 drafts of those letters shared with Gila River or Salt 13 River prior -- 14 MR. HOFFMAN: Object- -- Sorry. 15 BY MR. TILLEMANN: 16 Q. -- prior to them being sent to The Tohono O'odham 17 Nation? 18 MR. HOFFMAN: Objection. Form and 19 foundation. And this has been asked and answered. 20 But you can answer again. 21 THE WITNESS: No. 22 BY MR. TILLEMANN: 23 Q. And so no drafts of them were reviewed by Salt 24 River or Gila and the final versions were not shared with 25 Gila and Salt?</p>

<p>11:46:16-11:47:41 Page 90</p> <p>1 MR. HOFFMAN: Same --</p> <p>2 THE WITNESS: No.</p> <p>3 MR. HOFFMAN: -- same objections.</p> <p>4 BY MR. TILLEMEN:</p> <p>5 Q. No, they were not?</p> <p>6 A. They were not.</p> <p>7 (Deposition Exhibit 8 was marked for</p> <p>8 identification.)</p> <p>9 BY MR. TILLEMEN:</p> <p>10 Q. Mr. Banan, I've handed you what's been marked as</p> <p>11 Exhibit 8 to your deposition.</p> <p>12 A. Yes.</p> <p>13 Q. It's a letter that was sent from the Arizona</p> <p>14 Department of Gaming to the Congressional Budget Office.</p> <p>15 Did -- did any -- did Salt or -- Salt River or Gila River</p> <p>16 have any input into this letter that was sent from the</p> <p>17 Department of Gaming -- Arizona Department of Gaming to</p> <p>18 the congressional bus -- Congressional Budget Office?</p> <p>19 MR. HOFFMAN: Objection. Form, foundation.</p> <p>20 THE WITNESS: Mr. Tillemen, this is the</p> <p>21 first time that I've seen this document. I do not know</p> <p>22 anything about it.</p> <p>23 BY MR. TILLEMEN:</p> <p>24 Q. To the best of your knowledge -- Strike that.</p> <p>25 As far as you're aware, no Indian tribe had</p>	<p>11:49:23-11:50:24 Page 92</p> <p>1 of Gaming wrote to any congressman or senator or the CBO</p> <p>2 shared subsequently with -- with Gila River or Salt River?</p> <p>3 MR. HOFFMAN: Objection. Form and</p> <p>4 foundation.</p> <p>5 THE WITNESS: Yeah, I'm -- I'm unaware that</p> <p>6 any of the -- those pieces of correspondence were ever</p> <p>7 sent.</p> <p>8 BY MR. TILLEMEN:</p> <p>9 Q. To Gila or Salt?</p> <p>10 A. Correct. And to the Congressional Budget Office.</p> <p>11 As I said, I've never seen Exhibit 8 before.</p> <p>12 Q. Are you aware of any communications that the</p> <p>13 Department of Gaming had with Gila River or Salt River</p> <p>14 concerning your meetings that occurred with the liquor</p> <p>15 board?</p> <p>16 MR. HOFFMAN: Objection. Form, foundation.</p> <p>17 THE WITNESS: No, I'm not.</p> <p>18 BY MR. TILLEMEN:</p> <p>19 Q. That would be either before or after the meetings</p> <p>20 you had with the -- before or after the meeting you had</p> <p>21 with the Department of Liquor?</p> <p>22 MR. HOFFMAN: Objection. Form, foundation.</p> <p>23 THE WITNESS: Yeah, I -- I have no knowledge</p> <p>24 of any communications. I certainly didn't have any</p> <p>25 communications with either of the two tribes, Salt or</p>
<p>11:47:45-11:49:17 Page 91</p> <p>1 any input in communications that the Department of Gaming</p> <p>2 had with the Congressional Budget Office?</p> <p>3 MR. HOFFMAN: Objection. Form, foundation.</p> <p>4 BY MR. TILLEMEN:</p> <p>5 Q. Is that correct?</p> <p>6 A. Yeah, to the best of my knowledge, but I know</p> <p>7 nothing about it.</p> <p>8 Q. And, again, to the best of your knowledge, no</p> <p>9 Indian tribe had any input into any communication that the</p> <p>10 Department of Gaming had with any senator or congressman</p> <p>11 concerning the West Valley Resort?</p> <p>12 A. That's correct.</p> <p>13 Q. Concerning the stratagems that you talked about</p> <p>14 earlier in your deposition that Mr. Pongrace presented,</p> <p>15 did any of those stratagems discuss specific</p> <p>16 communications with any congressman or senator that you</p> <p>17 recall?</p> <p>18 A. I recall him mentioning some names, presumably of</p> <p>19 congressmen and women -- or women, but I cannot remember</p> <p>20 what it was he was -- he was saying. Mr. Pongrace went on</p> <p>21 at length, and quite frankly, I -- I didn't understand a</p> <p>22 lot of what he was talking about, so I think I probably</p> <p>23 didn't pay as close attention as I should have.</p> <p>24 Q. To the best of your knowledge, was any</p> <p>25 communication that the department wrote -- the Department</p>	<p>11:50:28-11:51:35 Page 93</p> <p>1 Gila.</p> <p>2 BY MR. TILLEMEN:</p> <p>3 Q. What did you hope -- "you" being Roger Banan who</p> <p>4 executed the Common Interest Agreement -- what did you</p> <p>5 hope to achieve from Gila or Salt that you couldn't have</p> <p>6 achieved internally from the State?</p> <p>7 MR. HOFFMAN: Objection. Form, foundation.</p> <p>8 This has been asked and answered.</p> <p>9 And I'd caution the witness, to the extent</p> <p>10 that this implicates any communications you had with</p> <p>11 Director Bergin, I would instruct you not to answer.</p> <p>12 BY MR. TILLEMEN:</p> <p>13 Q. I don't know. It's possible you didn't discuss</p> <p>14 it with Director Bergin.</p> <p>15 A. The -- I was hoping to acquire legal information</p> <p>16 that might help me in analyzing what authorized, legal</p> <p>17 methods the Department of Gaming could take in order to</p> <p>18 stop the West Valley casino, which Gaming regarded as</p> <p>19 being unauthorized.</p> <p>20 Q. And you intended to obtain that legal information</p> <p>21 and keep it secret?</p> <p>22 MR. HOFFMAN: Objection. Form, foundation.</p> <p>23 BY MR. TILLEMEN:</p> <p>24 Q. Is that right?</p> <p>25 A. I don't think I had any intent to keep it secret,</p>


11:51:39-11:52:37	Page 94	11:53:45-11:55:44	Page 96
<p>1 no.</p> <p>2 Q. Keep it privileged pursuant to the public -- the</p> <p>3 Common Interest Agreement?</p> <p>4 A. Oh, I see. In -- in the sense of not giving our</p> <p>5 legal theories to Tohono O'odham Nation?</p> <p>6 Q. Correct.</p> <p>7 A. Yeah. Yeah, that was the intent.</p> <p>8 Q. Or telling Tohono O'odham Nation you were having</p> <p>9 discussions with Gila and Salt concerning your legal</p> <p>10 position?</p> <p>11 MR. HOFFMAN: Objection. Form, foundation.</p> <p>12 THE WITNESS: No, I was more interested in</p> <p>13 keeping any actual information that I acquired privileged.</p> <p>14 BY MR. TILLEMAN:</p> <p>15 Q. Did you discuss in any of the meetings you had</p> <p>16 with Salt River and Gila River the timing of their</p> <p>17 interactions and Mr. Pongrace's -- his activities in</p> <p>18 Washington being coordinated in any manner whatsoever with</p> <p>19 the actions you were taking at the Arizona Department of</p> <p>20 Gaming?</p> <p>21 MR. HOFFMAN: Objection. Form, foundation.</p> <p>22 THE WITNESS: Oh, there was no coordination,</p> <p>23 that I'm aware of.</p> <p>24 BY MR. TILLEMAN:</p> <p>25 Q. So you didn't discuss the fact that if you</p>	<p>1 THE WITNESS: No, there were none.</p> <p>2 BY MR. TILLEMAN:</p> <p>3 Q. In the -- in the meetings that you had with Gila</p> <p>4 and Salt, was the topic of a legal expert to be retained</p> <p>5 by the State discussed?</p> <p>6 MR. HOFFMAN: Objection. Form, foundation.</p> <p>7 THE WITNESS: No, I don't believe so.</p> <p>8 BY MR. TILLEMAN:</p> <p>9 Q. And so in those meetings, you-all never talked</p> <p>10 about a consulting expert that the State might be able to</p> <p>11 retain to help it with its case?</p> <p>12 MR. HOFFMAN: Objection. Form, foundation.</p> <p>13 THE WITNESS: Not that I recall, no.</p> <p>14 MR. TILLEMAN: Matt, give me a second here.</p> <p>15 Andrew -- I mean --</p> <p>16 MR. HOFFMAN: Struggling with the names</p> <p>17 today, Karl. That's usually our bailiwick.</p> <p>18 (Deposition Exhibit 9 was marked for</p> <p>19 identification.)</p> <p>20 MR. TILLEMAN: Yeah, Matt, we're going to go</p> <p>21 ahead and attach for -- to the record Exhibit 9, which is</p> <p>22 the email exchange that we had with respect to the</p> <p>23 redacted document, and as I said, I -- I think that that</p> <p>24 document was withheld on the basis of common interest, and</p> <p>25 if so, I'd ask -- ask about what was redacted. If it was</p>		
11:52:40-11:53:43	Page 95	11:55:48-11:57:02	Page 97
<p>1 could -- and specifically, the question, then, you didn't</p> <p>2 discuss specifically if you could slow down the</p> <p>3 certification process, that perhaps Mr. Pongrace could get</p> <p>4 Keep the Promise Act passed in Washington?</p> <p>5 MR. HOFFMAN: Objection. Form, foundation.</p> <p>6 THE WITNESS: No, I don't -- I don't recall</p> <p>7 ever discussing that with Mr. Pongrace or him saying</p> <p>8 anything about it either. He was just discussing in</p> <p>9 glowing terms how he'd hoped to see it passed that</p> <p>10 legislative session.</p> <p>11 BY MR. TILLEMAN:</p> <p>12 Q. And their stratagems for seeing it passed?</p> <p>13 A. He was talking about parliament -- how it works</p> <p>14 in terms of parliamentary procedures, various committees</p> <p>15 and readings and that sort of thing, which, really, as I</p> <p>16 said, I didn't know much about, and so I didn't really</p> <p>17 understand a lot of what he was saying, assuming it was</p> <p>18 understandable.</p> <p>19 Q. So there -- there was never any discussion about</p> <p>20 the timing of actions that Gila and River [sic] were</p> <p>21 taking in -- in Washington and the Department of Gaming</p> <p>22 was taking here in Arizona?</p> <p>23 A. No.</p> <p>24 MR. HOFFMAN: Object- -- objection. Form,</p> <p>25 foundation. This has been asked and answered.</p>	<p>1 attorney-client privileged, then -- then there's no need</p> <p>2 to follow up, but I do want to get it on the record. And</p> <p>3 I'm talking specifically on page 2 of that document,</p> <p>4 paragraph 4a, the first bullet point that talks about</p> <p>5 Entry 18.</p> <p>6 (An off-the-record discussion ensued.)</p> <p>7 THE WITNESS: This is something about Amanda</p> <p>8 Jacinto, isn't it? Isn't that what we're talking about?</p> <p>9 MR. HOFFMAN: We're not talking about it.</p> <p>10 THE WITNESS: We're not talking about it.</p> <p>11 MR. HOFFMAN: You can attach whatever you</p> <p>12 want to the transcript. I -- you know, I will -- I will</p> <p>13 have to go back and compare this entry with what was said,</p> <p>14 and we can -- we can discuss it. But I will tell you that</p> <p>15 I've just reviewed a final privilege log that was sent to</p> <p>16 the Nation that clearly indicates that that communication</p> <p>17 from Exhibit 5 was listed as attorney-client privileged.</p> <p>18 MR. TILLEMAN: Okay. To the extent it's</p> <p>19 attorney-client privileged, then we don't need to press</p> <p>20 further. To the extent there's a -- there's</p> <p>21 common-interest privilege, I would ask about it. And I</p> <p>22 think we're going to say we agree to disagree, Matt.</p> <p>23 MR. HOFFMAN: Well, this is clearly a</p> <p>24 communication between Mr. Banan and Ms. Jacinto, who's an</p> <p>25 employee of the Arizona Department of Gaming. So that --</p>		

11:57:04-11:59:27	Page 98	12:00:56-12:02:22	Page 100
<p>1 that is an attorney-client communication. That's not</p> <p>2 common interest. We've -- we've produced the -- The</p> <p>3 unredacted portion is apparently somebody emailed --</p> <p>4 somebody named Andy Anderson from Gila River. That's been</p> <p>5 produced.</p> <p>6 (Deposition Exhibit 10 was marked for</p> <p>7 identification.)</p> <p>8 BY MR. TILLEMAN:</p> <p>9 Q. Mr. Banan, I've handed -- I've handed you what's</p> <p>10 been marked as Exhibit 10 to your deposition. It's a</p> <p>11 letter that was sent from the Arizona Department of Gaming</p> <p>12 to Mr. Derrick at the Tohono O'odham Gaming Office. And</p> <p>13 the -- the last page of the document has an Employee</p> <p>14 Notice, and I think I asked if you had communicated</p> <p>15 regarding any Employee Notice. And I -- and I thought</p> <p>16 perhaps you said that there wasn't one, so I wanted just</p> <p>17 to clarify, on the vendor letters that were being</p> <p>18 discussed, whether that included an Employee Notice.</p> <p>19 A. Frankly, this is the first time I've seen an</p> <p>20 Employee Notice. It looks like a draft. At the top, it</p> <p>21 says "Month," comma -- "Month Day, Year." So I -- I don't</p> <p>22 know whether any Employee Notice was ever sent out. My</p> <p>23 understanding was that there was going to be no employee</p> <p>24 notices, just vendor notices.</p> <p>25 Q. Okay. These are the vendor letters in the --</p>		<p>1 THE WITNESS: Yeah, I don't recall that I</p> <p>2 gave them any reason why. I just introduced myself and</p> <p>3 sat down.</p> <p>4 BY MR. TILLEMAN:</p> <p>5 Q. Did they ask why the -- why the director was</p> <p>6 there -- not there rather than --</p> <p>7 A. They did not. So perhaps they -- they knew why</p> <p>8 he wasn't there. I don't know. I didn't have anything to</p> <p>9 do with that. I just attended.</p> <p>10 Q. I've asked about input into the letters -- the</p> <p>11 drafts and final letters. You've said that there was none</p> <p>12 by Salt or Gila, any communication the department had</p> <p>13 with -- with Tohono O'odham.</p> <p>14 Did you ever discuss the department's</p> <p>15 strategy with either holo -- Gila River or Salt other than</p> <p>16 what you've described in these meetings that you had with</p> <p>17 them in your -- in your deposition?</p> <p>18 A. No.</p> <p>19 MR. HOFFMAN: Object.</p> <p>20 THE WITNESS: That -- that was it. And it</p> <p>21 was in June that the department -- or, Director Bergin was</p> <p>22 sued. So that pretty much put an end to all of my</p> <p>23 strategy theorizing about what could be done legally to</p> <p>24 stop the casino.</p> <p>25</p>	
11:59:33-12:00:55	Page 99	12:02:23-12:03:49	Page 101
<p>1 Exhibit 10 that you were discussing in your email?</p> <p>2 A. I guess so. It's actually the first time I've</p> <p>3 ever seen them.</p> <p>4 Q. So prior to today, you had never -- you've never</p> <p>5 seen the vendor letters that were dis- -- were the subject</p> <p>6 of Exhibit 2 to your deposition?</p> <p>7 A. Yeah, the drafting of the vendor letters and</p> <p>8 the -- the mailing of them and the decisions as to who to</p> <p>9 send them to were not within my purview. Those were all</p> <p>10 made by other people at the department.</p> <p>11 Q. To the best of your knowledge, did any Indian</p> <p>12 tribe other than The Tohono O'odham Nation, specifically</p> <p>13 Salt River and Gila River, have any input into the vendor</p> <p>14 letters?</p> <p>15 A. I don't believe so.</p> <p>16 Q. Am I understanding correctly that Director Bergin</p> <p>17 sent you to the four -- he sent you to the three meetings</p> <p>18 that you attended with Gila and Salt that were not held in</p> <p>19 the Governor's Office?</p> <p>20 A. Yeah. He asked me to attend in his stead. They</p> <p>21 had invited him -- the tribes had invited him to attend,</p> <p>22 but he asked me to go.</p> <p>23 Q. And what did you tell the tribes that -- the</p> <p>24 reason for you being there rather than Director Bergin?</p> <p>25 MR. HOFFMAN: Objection. Form, foundation.</p>		<p>1 BY MR. TILLEMAN:</p> <p>2 Q. Why did you -- why did you stop meeting with Gila</p> <p>3 and Salt after Director Bergin had been sued?</p> <p>4 MR. HOFFMAN: Objection. Form, foundation.</p> <p>5 THE WITNESS: I -- I honestly don't know why</p> <p>6 they stopped asking us. They weren't parties to the</p> <p>7 lawsuit, so I guess you'd have to ask them.</p> <p>8 BY MR. TILLEMAN:</p> <p>9 Q. So since the litigation had been filed with --</p> <p>10 between The Tohono O'odham Nation and Director Bergin,</p> <p>11 neither Salt nor Gila asked for a meeting with the</p> <p>12 Department of Gaming after that date?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. Mr. Banan, do you -- do you keep time records at</p> <p>15 the -- at the AG's office?</p> <p>16 MR. HOFFMAN: Objection. Form, foundation.</p> <p>17 And this is -- this sounds awfully close to calling for</p> <p>18 attorney work product.</p> <p>19 MR. TILLEMAN: I just --</p> <p>20 THE WITNESS: We don't.</p> <p>21 MR. TILLEMAN: Okay. That's -- I was</p> <p>22 wondering if any of this was identified in time records.</p> <p>23 Mr. Banan, that's all the questions that I</p> <p>24 have for today.</p> <p>25 THE WITNESS: Thank you, Mr. Tilleman.</p>	

12:03:51-12:04:00 Page 102

1 MR. HOFFMAN: We'll read and sign.
2 Anything?
3 Oh, we'll read and sign.
4 THE VIDEOGRAPHER: We are off the record.
5 The time on the video monitor is 12:03. This ends disk
6 three and the deposition of Roger Banan.
7 (The deposition was concluded at 12:03 p.m.)
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9 _____
10 ROGER L. BANAN, ESQ.
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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA)
3 BE IT KNOWN the foregoing deposition was
4 taken by me pursuant to stipulation of counsel; that I was
5 then and there a Certified Reporter of the State of
6 Arizona, and by virtue thereof authorized to administer an
7 oath; that the witness before testifying was duly sworn by
8 me to testify to the whole truth; notice was provided that
9 the transcript was available for signature by the
10 deponent; that the questions propounded by counsel and the
11 answers of the witness thereto were taken down by me in
12 shorthand and thereafter transcribed into typewriting
13 under my direction; that the foregoing pages are a full,
14 true, and accurate transcript of all proceedings and
15 testimony had and adduced upon the taking of said
16 deposition, all to the best of my skill and ability.
17 I FURTHER CERTIFY that I am in no way related to
18 nor employed by any parties hereto nor am I in any way
19 interested in the outcome hereof.
20 DATED at Phoenix, Arizona, this 26th day of
21 August, 2016.
22
23 
24 _____
25 Meri Coash, RMR, CRR
Certified Reporter #50327

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