

STEVEN D. SANDVEN

L A W O F F I C E

PRINCIPAL
Steven D. Sandven

*Admitted in South Dakota,
Minnesota & Washington D.C.*

300 North Dakota Avenue, Suite 106
Sioux Falls, South Dakota 57104
Telephone (605) 332-4408
Facsimile (605) 332-4496
ssandvenlaw@aol.com

January 22, 2011

Clerk of Court
Rosebud Sioux Tribal Court
P.O. Box 129
Rosebud SD 57570

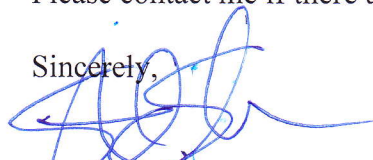
RE: ROSEBUD SIOUX TRIBE V. BBC ENTERTAINMENT, INC., CHARLES COLOMBE AND
WAYNE BOYD (CIV 09-069)

Dear Clerk of Court:

Please find for filing Plaintiff's Motion for Summary Judgment with supporting Memorandum of Law and Certificate of Service. Please provide available date and time for scheduling said Motion if a hearing is required. Thank you.

Please contact me if there are any questions.

Sincerely,



STEVEN D. SANDVEN
Attorney for Rosebud Casino

Enclosure

STEVEN D. SANDVEN, Law Offices

Steven D. Sandven, Esq.
Three Hundred Building, Suite 106
300 North Dakota Avenue
Sioux Falls, South Dakota 57104
TEL: (605) 332-4408
FAX: (605) 332-4496

**ROSEBUD SIOUX TRIBE
IN TRIBAL COURT**

ROSEBUD SIOUX TRIBE,

Plaintiff,

v.

BBC ENTERTAINMENT, INC., CHARLES
COLOMBE, WAYNE BOYD, and JOHN
BOYD

Defendants.

CASE NO. CIV 09-069

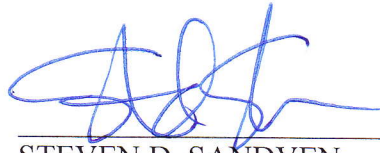
**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that the Rosebud Sioux Tribe moves this Court for a Summary Judgment in the above-described matter pursuant to Rule 56 of the Rosebud Sioux Tribe's Rules of Civil Procedure. Attached to this Notice of Motion and Motion for Summary Judgment is Plaintiff's Memorandum of Law in Support of summary Judgment. The undersigned counsel will make an appearance before the Court in the event it is determined that a hearing is necessary.

January 22, 2011

STEVEN D. SANDVEN, Law Office

By:



STEVEN D. SANDVEN

300 Building

300 North Dakota Avenue, Suite 106

Sioux Falls SD 57104

Telephone: 605 332-4408

STEVEN D. SANDVEN, Law Offices

Steven D. Sandven, Esq.
Three Hundred Building, Suite 106
300 North Dakota Avenue
Sioux Falls, South Dakota 57104
TEL: (605) 332-4408
FAX: (605) 332-4496

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BBC ENTERTAINMENT, INC., CHARLES
COLOMBE, WAYNE BOYD, and JOHN
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Defendants.

CASE NO. CIV 09-069

**MEMORANDUM OF LAW
IN SUPPORT OF
SUMMARY JUDGMENT**

Plaintiff, the Rosebud Sioux Tribe (hereinafter the "Tribe"), by and through its undersigned counsel, hereby moves pursuant to Rule 56 of the Rosebud Sioux Tribe's Rules of Civil Procedure for an order entering summary judgment against the Defendants, because the record shows that there are no material issues of fact in dispute. Accordingly, the Tribe is entitled to a judgment as a matter of law.

PROCEDURAL HISTORY

On February 17, 2009, the Tribe filed their Complaint seeking to pierce the corporate veil of BBC Entertainment, Inc. to collect a judgment entered by the Tribal

Court on or about October 16, 2007, in Rosebud Sioux Tribe v. BBC Entertainment, Inc. (CIV 01-230). **Exhibit 1.** Minutes of Defendant BBC Entertainment, Inc. and the Rosebud Sioux Tribe both illustrate that Defendant Colombe owns 50% of BBC Entertainment, Inc. and John Boyd and Defendant Wayne Boyd own 25% each. Defendant Wayne Boyd disputes ownership of BBC Entertainment, Inc. but has provided no evidence to the contrary.

On or about March 24, 2009, the Tribe requested answers to its interrogatories, requests for productions of documents and requests for admissions from each Defendant. **Exhibits 2 – 4.** The Tribe filed its motion to compel discovery on May 4, 2009, but received no response. **Exhibit 5.**

Defendant Boyd filed his first motion to dismiss on March 23, 2009. **Exhibit 6.** The Tribe submitted a Motion for a More Definite Statement on April 14, 2009. **Exhibit 7.** In response, Defendant Boyd filed an amended motion to dismiss on May 4, 2009. **Exhibit 8.** The Tribe responded to the amended motion to dismiss on May 15, 2009. **Exhibit 9.**

Defendant Colombe filed his motion to dismiss on March 24, 2009. **Exhibit 10.** The Tribe replied to the motion on April 15, 2009. **Exhibit 11.** Defendant Colombe filed an additional motion to dismiss on August 21, 2009. **Exhibit 12.**

On May 13, 2009, the Tribe filed its motion to disqualify Steven Emery because of his previous employment as the Tribe's attorney. **Exhibit 13.** Attorney Emery replied on May 19, 2009. **Exhibit 14.** Judge Marshall denied the Tribe's motion on June 23, 2009. **Exhibit 15.**

The Tribe filed a motion for sanctions on June 11, 2009 for various misrepresentations made by Attorney Emery. **Exhibit 16.** Attorney Emery replied on August 8, 2009, and the Tribe responded thereto on August 19, 2009. **Exhibits 17 and Exhibit 18.**

The Clerk of Court scheduled hearings on Defendants' motions to dismiss at the request of Defendants on April 17, 2009. **Exhibit 19.** However, Defendants cancelled the hearing shortly before it was to commence. The Tribe sent memoranda to Defendants Colombe and Boyd on May 4, 2009 requesting available dates for taking depositions. **Exhibits 20 and 21.**

On July 27, 2009, the Tribe provided notice for an August 5, 2009 hearing on its motion to compel and motion for sanctions. **Exhibit 22.** The Tribal Court initially scheduled a hearing but then sent a letter to counsel dated August 3, 2009 "to first set Defendants' motion to dismiss for hearing" and "[f]ollowing that, if necessary, Plaintiff's Motion to Compel and Motion for Sanctions will be set for hearing." **Exhibit 23.** Notice for the August 21, 2009 hearing was provided on August 10, 2009. **Exhibit 24.**

Oral argument on the Defendants' motions to dismiss was heard by Judge Marshall on August 21, 2009. The Court issued its Order denying Defendants' motions to dismiss on April 26, 2010. **Exhibit 25.**

Pursuant to Judge Marshall's order, the Tribe served its various discovery requests on each of the Defendants a second time. **Exhibits 26 and 27.** The Tribe requested available dates from Defendants for depositions on May 6, 2010. **Exhibits 28 – 30.**

The Tribe filed a motion to compel discovery on July 16, 2010. **Exhibit 31.** Defendants requested an extension on July 26, 2010 to have until August 22, 2010 to reply. **Exhibit 32.** The Court granted Defendants' request on July 28, 2010. **Exhibit 33.** Defendants requested another extension on August 18, 2010 to have until September 9, 2010 to reply. **Exhibit 34.** Again, the Court granted Defendants' request. **Exhibit 35.**

Defendant Colombe filed his motion in opposition to compel discovery on September 9, 2010. **Exhibit 36.** On September 23, 2010, the Tribe provided notice to interested parties that a hearing would be held on its motion to compel discovery on October 6, 2010. **Exhibit 37.** The Tribe filed its motion in opposition to Defendant Colombe's request for extension on October 1, 2010. **Exhibit 38.** On October 1, 2010, the Court issued an Order denying Defendant Colombe's request for an extension. **Exhibit 39.** The Tribe filed memoranda in reply to Defendants' motions to quash discovery on October 4, 2010. **Exhibits 40 and 41.** The Court granted the request for continuance on its own motion on October 5, 2010. **Exhibit 42.**

On October 22, 2010, the Court issued an Order setting a hearing for November 18, 2010. **Exhibit 43.** Due to a clerical error, the Court conducted a hearing on November 8, 2010 without providing notice to the Tribe. **Exhibit 44.** The Tribe filed its motion to strike the order on November 16, 2010. **Exhibit 45.** In response thereto, the Court vacated its order on November 16, 2010. **Exhibit 46.** A hearing was conducted on December 13, 2010 and the Court ordered that Defendants respond to written discovery by January 22, 2011. **Exhibit 47.** Defendants' attorney requested leave to withdraw on January 13, 2011 because Defendants refused to respond to the Tribe's discovery

requests. **Exhibit 48.** To date, the Tribe still has not received responses from any of the Defendants.

LEGAL STANDARD

Rule 56 of the Rosebud Sioux Tribe's Rules of Civil Procedure provides as follows:

At any time 30 days after commencement of an action any party may move the Court for summary judgment as to any or all issues presented in the case, and such shall be granted by the Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motion shall be served not less than 10 days prior to the hearing on said motion and may be supported by affidavits, discovery material, or memorandum, all of which must be made available to the opposing parties at least 10 days prior to the hearing. The opposing party shall have full opportunity to respond to such motion at the time fixed for hearing.

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See Dana Corp. v. Belvedere International Inc., 950 F.2d 1555 (Fed.Cir. 1991). Only disputes over facts that might affect the outcome of the case under the governing substantive law will properly preclude summary judgment.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

"One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims and defenses. ..." Anderson, 477 U.S. at 249-50. See also Bowlin v. Mantanez, 446 F.3d 817, 819 (8th Cir. 2006). Rule 56 directs the Court to determine "whether there is a need for trial – whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Anderson, 477 U.S. at 250.

“[T]his standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” Id. at 247-49.

Procedurally, the party moving for summary judgment bears the burden to demonstrate there are no genuine issues of material fact. Celotex, 477 U.S. at 323. If the moving party successfully carries the burden, the burden shifts to the nonmoving party, who may not rest on the allegations of the pleadings, but rather must designate specific facts by the use of affidavits, depositions, admissions, or answers to interrogatories showing that there is a genuine issue of material fact for trial. Id. at 324. The Seventh Circuit has described the summary judgment stage as the “put up or shut up” moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events. *See Koszola v. Bd. of Educ. of City of Chicago*, 385 F.3d 1104, 1111 (7th Cir. 2004). A “genuine” issue of material fact is more than “some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The nonmoving party must offer evidence “such that a reasonable jury could return a verdict for the nonmoving party.” Anderson, 477 U.S. at 248. In this case, genuine factual issues are not in dispute.

ARGUMENT

A. The Tribe’s Motion Is Supported by Defendants’ Admissions.

Rule 26(f) of the Rosebud Sioux Tribe’s Rules of Civil Procedure provides:

If a party fails to respond or appear for discovery as provided in these rules, the opposing party may move the Court for an Order to compel the non-performing party to perform. The Court may award costs or attorney fees to the non-defaulting party for the necessity of bringing the matter

before the Court. If a party fails to perform after being ordered to do so by the Court, ***the Court may upon motion and notice order that a certain fact, claim, or defense be deemed established or strike part of a claim or defense or dismiss the action or render a judgment by default against the non complying party in an aggravated case.*** Emphasis added

Admissions made under Rule 26, even default admissions, can serve as the factual predicate of summary judgment. See United States v. Kasuboski, 834 F.2d 1345, 1350 (7th Cir. 1987), citing Dukes v. South Carolina Ins. Co., 770 F.2d 545 (5th Cir. 1985); Donovan v. Carls Drug Co., 703 F.2d 650 (2nd Cir. 1983). In fact, it has long been established in the circuit courts that a party's failure to answer a request for admission constitutes admission of each matter for which admission was sought and can serve as the factual predicate for summary judgment. See Cent. States, Se. and Sw. Areas Pension Fund v. GL & B Leasing Co., Inc., 874 F.Supp. 217, 218 n.1 (N.D.Ill. 1995); Moosman v. Joseph P. Blitz, Inc., 358 F.2d 686, 688 (2nd Cir. 1966)(holding that if the facts that are admitted are dispositive of the case, then it is proper for the district court to grant summary judgment.)

On March 24, 2009, the Tribe served the Defendants, via United States mail, with discovery demands including interrogatories, requests for production, and a set of requests for admissions. See Exhibit 2-4. No reply was received from the Defendants, and so on April 29, 2010, the identical discovery request was again mailed to the Defendants. Again, the Tribe received no response. A plethora of motions were filed which culminated in the Court's denial of the Defendants' various motions to dismiss. In response to the Court's Order, the Tribe reserved its discovery requests on the Defendants on April 29, 2010. Defendants again failed to respond, and therefore, the Tribe filed a motion to compel discovery on July 16, 2010. See Exhibit 31. After numerous requests

for extensions to reply were granted to the Defendants, a hearing was held on December 13, 2010, and the Court ordered that Defendants respond to written discovery by January 22, 2011. January 22nd has now passed with no response from the Defendants. Even Defendants' counsel acknowledges his clients' passiveness in his January 13, 2011 Motion to Withdraw that "[t]he failure of defendants to respond to requests of the undersigned for the requisite records to respond to opposing counsel's interrogatories leaves the undersigned with no alternative course but to seek leave of the Court to withdraw as counsel"¹ **Exhibit 48.**

Based upon the foregoing, all matters contained in the requests for admission are deemed admitted pursuant to Rule 26(f) of the Rosebud Sioux Tribe's Rules of Civil Procedure. Moreover, the matters deemed admitted may now serve as the factual predicate for this motion.

B. Defendant Colombe's Admissions Are Established.

Defendant Colombe failed to timely respond to the Tribe's Requests for Admissions, and based thereon, the following facts are deemed admitted:

- Exhibit 2 attached to the Tribe's Complaint is a true, correct, and complete copy of the minutes of the first meeting of BBC Entertainment, Inc.
- Exhibit 3 attached to the Tribe's Complaint is a true, correct, and complete copy of the minutes of BBC Entertainment, Inc.
- Exhibit 5 attached to the Tribe's Complaint is a true, correct, and complete copy of the letter sent by Alex Lunderman, President of the Rosebud Sioux Tribe to the National Indian Gaming Commission on behalf of the Tribe and BBC Entertainment, Inc.

¹ Defendants' counsel also states "Upon information and belief, Mr. Colombe has filed a federal lawsuit against Judge Marshall and the Tribal Court and the undersigned cannot continue to represent Mr. Colombe when the federal action conflicts with my representation of Mr. Colombe in Tribal Court"

- Exhibit 6 attached to the Tribe's Complaint is a true, correct, and complete copy of the Management Agreement between the Rosebud Sioux Tribe and BBC Entertainment, Inc. for management of the Tribe's gaming.
- Exhibit 7 attached to the Tribe's Complaint is a true, correct, and complete copy of the minutes of BBC Entertainment, Inc. held on December 7, 1993.
- Exhibit 8 attached to the Tribe's Complaint is a true, correct, and complete copy of the minutes of the combined shareholder and director meeting of BBC Entertainment, Inc., held on March 11, 1994.
- Exhibit 9 attached to the Tribe's Complaint is a true, correct, and complete copy of an Agreement between BBC Entertainment, Inc., Defendant Colombe, John Boyd, and L. Wayne Boyd.
- Exhibit 10 attached to the Tribe's Complaint is a true, correct, and complete copy of a letter from the National Indian Gaming Commission to Defendant Colombe and the President of the Rosebud Sioux Tribe approving BBC Entertainment, Inc.'s Management Contract with the Tribe.
- Exhibit 11 attached to the Tribe's Complaint is a true, correct, and complete copy of the minutes of a shareholder and director combined meeting of BBC Entertainment, Inc. held on July 11, 1994.
- During shareholder meetings, Defendant Colombe would assert that he was the only shareholder in BBC Entertainment, Inc.
- Exhibit 13 attached to the Tribe's Complaint is a true, correct, and complete copy of the Rosebud Sioux Tribal Council Minutes of September 26, 1994.
- Exhibit 14 attached to the Tribe's Complaint is a true, correct, and complete copy of a letter from Terry Pachota to the President of the Rosebud Sioux Tribe in which compliance of the management structure of BBC Entertainment, Inc. with the Management Agreement was discussed.
- Exhibit 15 attached to the Tribe's Complaint is a true, correct, and complete copy of a combined meeting of shareholders and directors of BBC Entertainment, Inc. held on October 25, 1994 in which BBC Entertainment, Inc. attempts to comply with the original Management Agreement.
- Exhibit 16 attached to the Tribe's Complaint is a true, complete, and correct copy of BBC Entertainment's transmittal letter to the Chairman of the Tribal Gaming Commission.
- Exhibit 22 attached to the Tribe's Complaint is a true, correct, and complete letter from the Tribal President to Defendant Colombe, dated August 20, 1999

regarding questionable transfers by Defendant Colombe to his wife and business, Western Events.

- BBC Entertainment, Inc. was administratively dissolved in 2006.
- Exhibit 26 attached to the Tribe's Complaint is a true, correct, and complete copy of an Affidavit Defendant Colombe presented to the Court in the case of Rosebud Sioux Tribe v. BBC Entertainment, Inc., Civ. 01-230.

C. Defendant Boyd's Admissions Are Established.

Defendant Boyd failed to timely respond to the Tribe's Requests for Admissions, and based thereon, the following facts are deemed admitted:

- Defendant Boyd was present at the Organizational Meeting of BBC Entertainment, Inc.
- Defendant Boyd was elected Secretary/Treasurer of BBC Entertainment, Inc. at the Organizational Meeting.
- Exhibit 3 attached to the Tribe's Complaint is a true, correct, and complete copy of the minutes of the Organization Meeting of BBC Entertainment, Inc.
- Exhibit 6 attached to the Tribe's Complaint is a true, correct, and complete copy of the Management Agreement entered into between the Tribe and BBC Entertainment, Inc.
- Defendant Boyd signed the Management Agreement executed by the Rosebud Sioux Tribe and BBC Entertainment, Inc.
- Exhibit 9 attached to the Tribe's Complaint is a true, complete, and correct copy of an agreement entered into by Defendant Boyd on March 11, 1994.
- Exhibit 12 attached to the Tribe's Complaint is a true, complete, and correct copy of a letter from Defendant Boyd to Mike Boltz, Chairman of the Rosebud Sioux Tribe Commission on Gaming.
- Exhibit 13 attached to the Tribe's Complaint is a true, correct, and complete copy of the minutes of the Rosebud Sioux Tribal Council of September 26, 1994.
- Exhibit 14 attached to the Tribe's Complaint is a true, correct, and complete copy of a letter from attorney Terry Pechota to the President of the Rosebud Sioux Tribe dated September 30, 1994.

- Exhibit 15 attached to the Tribe's Complaint is a true, correct, and complete copy of the minutes of BBC Entertainment, Inc.'s combined shareholders and directors meeting held on October 25, 1994.
- At the time of the October 25, 1994, meeting Defendant Boyd had not purchased the 2,500 shares of stock that he had agreed to purchase earlier.
- The signature above the words "L. Wayne Boyd" on the last page of the October 25, 1994 minutes was penned by Defendant Boyd.
- Exhibit 17 attached to the Tribe's Complaint and dated April 7, 1995, to Richard Lunderman, Director of the Rosebud Sioux Tribe Gaming Commission is a true and correct copy of Defendant Boyd's proposal to the Gaming Commission.
- Exhibit 18 attached to the Tribe's Complaint is a true, correct, and complete copy of a memorandum from Terry Pechota to Tuffy Lunderman dated April 10, 1995, responding to Defendant Boyd's proposal.
- Exhibit 19 attached to the Tribe's Complaint contains true and correct copies of filings with the South Dakota Secretary of State from 1995 through 2004, inclusive, for BBC Entertainment, Inc.
- Defendant Boyd attended the Rosebud Sioux Tribal Council meeting of January 11, 1996 on behalf of BBC Entertainment, Inc.
- Exhibit 20 attached to the Tribe's Complaint is a true, complete, and correct copy of the Rosebud Sioux Tribal Council minutes for January 11, 1996.
- Defendant Boyd told Tribal Vice-President Rose Cordier that he was "not aware of any discrepancies and/or alleged violations" that she asked him about.
- Exhibit 21 attached to the Tribe's Complaint is a true, correct, and complete copy of a letter from Vice-President Cordier to Paul Valandra which details some of the discrepancies/violations she asked Defendant Boyd about.

D. Defendant BBC Entertainment Inc's Admissions Are Established.

Defendant BBC Entertainment, Inc. failed to timely respond to the Tribe's

Requests for Admissions, and based thereon, the following facts are deemed admitted:

- Exhibit 1 attached to the Tribe's Complaint, is a true and correct copy of the Judgment rendered in the case of Rosebud Sioux Tribe v. BBC Entertainment, Inc., Rosebud Sioux Tribe Tribal Court, Civ. 01-230.

- Any change in the Corporate structure of BBC Entertainment, Inc. required the approval of the National Indian Gaming Commission.
- No submissions of changes in BBC Entertainment's corporate structure were submitted to the National Indian Gaming Commission.
- BBC Entertainment, Inc. is a Minnesota corporation.
- BBC Entertainment, Inc. is not authorized to do business in the State of South Dakota.
- Exhibit 4 attached to the Tribe's Complaint is a true and correct copy of BBC's history in South Dakota.
- BBC Entertainment, Inc. was first incorporated in February 1993 in Minnesota.
- BBC Entertainment, Inc. was administratively dissolved in 2006 by the State for not maintaining its corporate records.
- Exhibit 9 attached to the Tribe's Complaint is a true, correct, and complete copy of an Agreement entered into by BBC Entertainment, Inc., John Boyd, Wayne Boyd, and Charles Colombe on March 11, 1994.
- Exhibit 19 attached to the Tribe's Complaint contains true and correct copies of the annual filings with the State of South Dakota by BBC Entertainment, Inc. from the years 1995 through 2004, inclusive.
- Exhibit 23 attached to the Tribe's Complaint is a true, complete, and correct copy of the Court's decision dated September 8, 2003 denying BBC Entertainment's partial summary judgment in the case of Rosebud Sioux Tribe v. BBC Entertainment, Inc.
- Exhibit 24 attached to the Tribe's Complaint is a true, complete, and correct copy of the Supreme Court of the Rosebud Sioux Tribe's decision dated July 20, 2006.
- Exhibit 25 attached to the Tribe's Complaint is a true and correct copy of the South Dakota Secretary of State's revocation of BBC Entertainment's authority to do business in South Dakota as of November 6, 2006.
- Exhibit 26 attached to the Tribe's Complaint is a true, correct, and complete copy of the Affidavit of Charles C. Colombe submitted in support of BBC Entertainment's Motion for Summary Judgment.

E. The Tribe Is Entitled to Judgment As A Matter of Law.

The Tribe is entitled to judgment because the Defendants admit as a matter of law the following facts: (1) at relevant times, no officer or director other than Defendants Charles Colombe, Defendant Wayne Boyd and John Boyd (deceased), the dominant and only officers and/or directors of BBC Entertainment, Inc., actually functioned in the business decision-making of BBC Entertainment, Inc; (2) at all relevant times, Defendants Charles Colombe, Defendant Wayne Boyd and John Boyd (deceased) used their control over the assets and business decisions of BBC Entertainment, Inc. to further their personal interests as the ultimate owners of BBC Entertainment, Inc.; (3) at all relevant times, BBC Entertainment, Inc. failed to observe corporate formalities resulting in their administrative dissolution on 2006; (4) At all relevant times, BBC Entertainment, Inc. failed to keep corporate records; (5) At all relevant times, when taking into account its obligations, including its obligations to the Rosebud Sioux Tribe, BBC Entertainment, Inc. was undercapitalized and functioned essentially as a corporate shell; (6) Defendants Charles Colombe, Defendant Wayne Boyd and John Boyd (deceased), for personal gain, orchestrated the actions of BBC Entertainment, Inc. to cause this entity to breach its obligations under the Management Agreement; (7) Defendants exercised their control over BBC Entertainment, Inc., to the detriment of the Rosebud Sioux Tribe to insulate themselves from any liability that might arise from their individual failure to satisfy their obligations under the Management Agreement; (8) Defendants controlled the business decisions at all relevant times in a manner that rendered its corporate form a sham and a façade for their personal benefits; and (9) By virtue of, *inter alia*, Defendants' domination and control over the business decisions and assets of BBC Entertainment,

Inc., they are the alter egos of this entity. Given the facts and circumstances stated herein, the Tribe is entitled to a judgment as a matter of law.

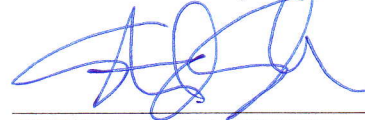
CONCLUSION

The individual Defendants are the alter egos of BBC Entertainment, Inc. These Defendants used their control over the assets and business decisions of BBC Entertainment, Inc. to further their personal interests as the ultimate owners of BBC Entertainment, Inc. Defendants have not participated in discovery and have admitted all of the Tribe's Requests for Admissions due to their failure to respond. For the foregoing reasons, the Court is respectfully asked to enter summary judgment for the Tribe.

January 22, 2011

STEVEN D. SANDVEN, Law Office

By:

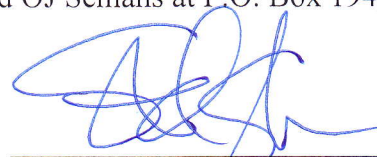


STEVEN D. SANDVEN
300 Building
300 North Dakota Avenue, Suite 106
Sioux Falls SD 57104
Telephone: 605 332-4408

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of January, 2011, a true and correct copy of the foregoing Plaintiff's Memorandum of Law in Support of Motion for Summary Judgment and supporting documents were mailed by first-class mail to Steve Emery, P.O. Drawer 147, Eagle Butte SD 57625 and OJ Semans at P.O. Box 194, Mission, South Dakota 57555.

January 22, 2011



STEVEN SANDVEN