



The Kumeyaay
Information
Village & Website

July 20, 2015

Sycuan Band of the Kumeyaay Nation
Tribal Government Office
1 Kwaaypaay Court
El Cajon, CA 92019

ATTENTION: Cody Martinez

RE: Outstanding Contracts

Dear Chairman Martinez,

I've maintained hope that a new Chairman will give me the "fair review of the facts and timely closure" that I asked Danny Tucker for (and never received)—that's why I am contacting you today, to ask the same of you in your position of high authority.

Therefore, I am hoping you will take three minutes of your time to read my 2015 updated summary on the URL below and then get back to me:

http://www.gballard.net/openletter/to_sycuan/about.html

I cannot think of a better time for the Band to honor the promises its Chairpersons and Band members made to me and lay these matters to rest, while I am still alive. As time is of the essence to receive your reply so I see your positive intention, I look forward to receiving your reply within 30 days.

Very truly yours,

GARY G. BALLARD

PS: I sent Charlene a similar letter June 4th, 2015, but have received no response.

Email: (Gary's personal email and cell number edited)
PO Box 81828 • San Diego, CA 92138

Subject: Letter

Date: Wednesday, July 29, 2015 2:24 PM

From: Cody Martinez (email edited)

To: "gary (email edited)

Hello Gary,

I have received your letter dated July 20th, 2015.

I am aware you are seeking a response from Sycuan regarding a settlement on the photo portfolio that you own the rights to.

It is my intention to research the matter and any previous correspondence with staff from prior Council's, in addition to meeting with others on our current staff to discuss the issue.

I am asking for your patience on the matter, with the commitment that we will respond and put together a team to work on a settlement to this issue. 30 days (from today) is sufficient enough time for me to respond to you in a more formal and detailed manner.

Thank you,

Cody J. Martinez
Chairman
Sycuan Band of the Kumeyaay Nation
1 Kwaapaay Ct.
El Cajon, CA. 92019
P. 619-445-2613
F. 619-445-1927



Cody J. Martinez
Chairman

October 21, 2015

Henry R. Murphy
Vice Chairman

Gary Ballard
PO Box 81828
San Diego, CA 92138

Charlene Worrell
Secretary

Dear Gary,

LaShunna Davidson
Treasurer

I am in receipt of your July 20, 2015, letter in which you request that I review your "Open Letter to Sycuan" and respond to a request for settlement. Based on the information available at our Tribal offices and on your web site, it appears that you have a long-standing dispute with Sycuan, concerning contracts for photography services. Although I am not aware of all the details surrounding this dispute, I can assure you that the Tribe also would like to settle this matter.

Shu Brown
Council Member

Joshua Muse
Council Member

Alanna Sandoval
Councilwoman

In past correspondence, you indicated not only a willingness to come to some resolution, concerning the disputed contracts, but that you are also interested in selling your entire Sycuan collection to the Tribe for \$250,000.00. The Tribe is interested in obtaining photographs taken by you, dating back to the early 1980's, as well as all rights to these photographs, but before we can determine how much the tribe is willing to pay for the photographs, we need to develop a better understanding of the extent of the collection. To that end, the Tribal Council would like to schedule a time with you to review the collection and ask any questions they may have, regarding this matter.

Please let me know at your convenience when you would like to meet with myself and other members of the Tribal Council so that we may begin to move forward with settling this long-standing issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cody J. Martinez", is written over a blue circular scribble.

Cody J. Martinez
Chairman



January 4, 2016

Cody J. Martinez
Chairman

Henry R. Murphy
Vice Chairman

Charlene Worrell
Secretary

LaShunna Davidson
Treasurer

Shu Brown
Council Member

Joshua Muse
Council Member

Alanna Sandoval
Councilwoman

Gary G. Ballard
G. BALLARD Studio
P.O. Box 81828
San Diego, CA 92138

Dear Gary,

Thank you for meeting with the Tribal Council last month to discuss the purchase of your collection of photographs, representing the Sycuan people. During the meeting, you indicated that your collection consists of numerous images, including both Tribal and non-Tribal events and persons. You indicated that due to the volume of images, you are not interested in selling the collection in piecemeal, but rather you proposed selling the entire body of work, including all copyrights to Sycuan.

Although we appreciate the fact that you do not want to sell the collection in part, Sycuan is only interested in those images depicting its members. However, in an effort to move towards resolution of this matter, we are willing to purchase the entire collection knowing that not all of it is of use to us. Accordingly, Sycuan is willing to pay \$125,000 for the materials, including all copyrights.

As part of our purchase we would agree to publically announce the acquisition of your collection and acknowledge your years of documenting Sycuan and its people. Additionally, if you desire, we are willing to permit you to use images for purposes of showcasing your talents and portfolio.

If this proposal is satisfactory to you, please let me know so that we may conclude this matter.

Sincerely,

A handwritten signature in blue ink, appearing to be "Cody J. Martinez", written over a blue circular scribble.

Cody J. Martinez
Chairman

January 25, 2016



The Kumeyaay
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Village & Website

Cover Letter

Dear (*Chairman Cody J. Martinez, Vice Chairman Henry R. Murphy, Secretary Charlene Worrell, Treasurer LaShunna Davidson, Council Members Shu Brown and Joshua Muse, Councilwoman Alanna Sandoval*):

I urge you to give this package a review and negotiate with me for a price that is proportionate to the “copyrights” and “the materials” terms included in your offer. In retrospect, this package contains the conversation I should have had with you during our meeting.

PLEASE: My Sycuan collection represents 20 YEARS of hard, diligent work for your Band members—preserving, developing, organizing and growing the equity and goodwill in my Sycuan material and brands over thousands of unbilled hours—I do not believe your Price (\$125,000) measures up to my investments of time and resources or the copyrights to some 50,000 photographs and hundreds of hours of digital video contained in my Sycuan collection.

The root issue has always been your employees’ and vendors’ unauthorized digital assimilation and use of my copyrighted photography—after they erased my name, copyright notices and licensing agreements from it. The obvious outcome of that is 1) Sycuan can no longer distinguish my property from yours, 2) Sycuan doesn’t pay me or my heirs royalties to use or digitally store my property over the next 70 YEARS until my copyrights expire, and 3) Sycuan cannot even credit my historical legacy for what it uses and releases over all time. These are the problems our deal needs to clean up.

I know that none of you had anything to do with creating these problems or the agreements I made with your Band members and employees—and I want you to know I appreciate the opportunity you are giving me to present my information and have discussions with you regarding settling my 2006 complaint. I only ask that you consider my enclosed price arguments, re-evaluate your Price or Terms, and get back to me with a response to move us forward in this process.

Thank you in advance for your continued attention regarding these matters and I hope our business will soon be concluded to everyone’s reasonable benefit and quickly forgotten.

Very truly yours,

GARY G. BALLARD

ENCLOSURE: My letter in response to your offer, dated Jan. 4, 2016

(Gary’s personal email and cell number edited)
PO Box 81828 • San Diego, CA 92138



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January 25, 2016

Sycuan Band of the Kumeyaay Nation
Tribal Government Office
1 Kwaaypaay Court
El Cajon, CA 92019

Dear Chairman Martinez and Council Members,

I received your offer, dated Jan. 4, 2016 (Enc.4) and would like to move forward on it.

To be honest, **your Price (\$125,000)** hit me off guard because Cody's letter, dated Oct. 21, 2015 (Enc.3) introduced a \$250,000 price in his invitation to meet with the Council to settle my long-standing complaint. I did not give you a price during our meeting because I felt we were close on price and I was more interested in providing terms.

However, your offer also included **your Terms ("copyright" and all "materials")**. So to be honest again, I am not sure how to form a counter response because your Terms are the highest possible outcome to your advantage, and I am left with no power in the negotiation except to argue for a fair price—I just do not see how this type of matter can be settled fairly with one side dictating both price and terms.

But let me propose this:

I liked and trusted the Tribal members I did business with those 20 years—and all I've ever asked of any Chairman or Council Member was a fair shake based on the agreements your Band members and employees made with me—so how about I substantiate my Price (\$250,000) on Enclosure One; you review my arguments; and get back to me with a response to continue working out our differences?

Lastly, since you offered Terms, I would like an advanced review of whatever you want me to sign. And could you please be specific on "the material" requested in your Terms?

I will appreciate if I can receive your written response to this letter within 14 calendar days as time remains of the essence to conclude our business.

Respectfully,

GARY G. BALLARD

ENCLOSURES: My Price, My 2008 Estimate, Sycuan's Invitation, Sycuan's Offer

Email: (Gary's personal email and cell number edited)
PO Box 81828 • San Diego, CA 92138

PRICE HISTORY:

\$250,000 is the amount of my original 2008 Estimate for my Sycuan collection (see Enc.2). It is also the amount Sharon discussed in 2010, and as I told her in 2010 and Cody in 2015, a lot has changed since I gave that number to the Council in 2008—I still had my good name in the community, established Sycuan projects, my tools, and several lucrative tribal accounts outside of Sycuan to keep my business afloat. And both my career and Kumeyaay.Info Dream were still alive.

That original 2008 price included ONLY 190 gigabytes of digital material—the bulk of the Sycuan Fire material—an additional some 150 gigabytes (some 20,000 digital still images), plus additional firefighter documentary movie DVDs and two fire websites—were added to my collection after that price was given to the Council.

UNWANTED MATERIAL:

You cannot put the paint back in the can after your employees and vendors painted things up with it and expect to bargain as if the problems don't exist, or can you?

"The material" referenced in your Terms—my entire Sycuan collection—contains exclusive rights, copyrights, to some 50,000 still images and 300-plus gigabytes of digital material (not including video files). The obvious problems with picking and choosing only my best photographs of Tribal members from my image bank include:

- 1) It is extremely complicated to legally license and police rights to dozens or hundreds of images contained in a 50,000-image collection over the 70-year life of its copyrights—it is too prone failure to be an option. The amount of photographs Sycuan and its vendors have illegitimately accumulated, released and/or digitally stored over the past 15 years without my copyright notices and licensing agreements only ensures failure.
- 2) To have any chance of succeeding—all unauthorized photographs, including all derivative works, would first have to be identified and destroyed. This is not possible because no one there can distinguish my photographs from Sycuan's anymore, and the problems span decades of multiple user and company back-up archives.
- 3) The loss of exclusivity to my best images hugely devalues the rest of the collection, including its historical sister collection, Kumeyaay.Info. The Sycuan photographs represent the crown jewel of these huge historical projects.

My point: I think it is unfair to require me to exclude or devalue any images contained the collection so Sycuan can reap the benefit of its bargain. For example, the fire department material contains many great historical photographs and video clips of Chief Murphy, some of which Sycuan and its vendors have already acquired one way or another. I've seen Chief Murphy's and other firefighter images being used prominently by Sycuan—and likewise—it would be impossible to purge these images from Sycuan and vendor archives and destroy the derivative works that incorporate those images. Do you really think it's fair to pick and choose the Chief's top 30 fire portraits and video clips and leave the remaining 20,000 photographs and hundreds of hours of video contained in the firefighting material devalued after your employees and vendors used, altered and archived parts of that material without my copyright notices or licensing agreements or compensation?

But regardless: My Price is based on an appraisal that was given to the Council in 2008 before the bulk of the fire material existed and I am prepared to include this material, including the sycuanfire domains, at no additional charge under your copyright Terms because it most decisively resolves all archiving issues and puts Sycuan full control of the material (which was always my original goal).

ENCLOSURE TWO: MY ORIGINAL ESTIMATE

Page 1 of 2

This unedited Estimate below was sent to the Council in 2008 in response to their original Offer. Since then, two years of additional work for the Fire Department has swelled my Sycuan archive to well over 300 gigabytes (not including video files), plus the sycuanfire and gehotshots websites—a lot has changed regarding my business since writing this Estimate.

December 3, 2008

Sycuan Band of The Kumeyaay Nation
5459 Sycuan Road
El Cajon, CA 92019

RE: Sycuan's Offer, E-mail (November 25, 2008)

ATTENTION: (Name edited), Sycuan legal director

FAIR PRICE (based on expert firsthand knowledge)

I have no idea how Sycuan calculated its “fair” price, but as a working expert in these areas, I gave my FAIR PRICE a great deal of forethought.

First, the **190,000-megabyte** MOUNTAIN of digital files represent the enormous core investment of my free time — thousands of unbilled hours — I’ve spent outside of Sycuan invoices working on my goal to preserve, organize, develop the material, and build the Goodwill in my 22-year publishing business.

I am a noted CREATIVE ARTIST who specializes in these areas and am personally familiar with every image I photographed, printed, scanned, worked on, archived, released, and published — so I have a publisher’s eye to conceptualize the entire collection.

I am a noted DIGITAL EXPERT and have personally opened and carefully examined each of the thousands of digital files contained in the digital archive — so I understand its high-resolution file sizes, sophisticated enhancements, and technical qualities.

I am a noted FILM PHOTOGRAPHER and have expert knowledge of the professional medium-format cameras and films I used to produce the 30,000 plus film negatives — so I have a solid background to comprehend the quality and size of the film archive.

I am a noted PHOTOJOURNALIST, a HISTORICAL WITNESS to the period. The material documents an important period in California Indian history and sets the spotlight on the Sycuan reservation — so it has great historical significance as well — and I have demonstrated the basic potential this material has in telling a powerful Sycuan story.

Please see page 2

GOODWILL

As they like to say on the "Antiques Roadshow," we like everything about this collection:

1. The artist is famous for working in the specialized area.
2. The work is technically superb, creatively stylized and brilliant.
3. The work documents a key turning point in California Indian history.
4. Even the subject matter, Sycuan, adds a great deal of prominence to the collection.
5. And from a publisher's view, the massive archive contains clear, exclusive copyright.

BUSINESS

With unique qualifications — I know what I am talking about — and \$250,000 for full rights to own this MOUNTAIN RANGE of digital and film materials, COPYRIGHT and GOOD WILL, is a very conservative price in my opinion.

So please don't think I just pulled a number out of a hat to start negotiating because my every instinct tells me this work forms a true cornerstone of a greater, more substantial and priceless work that sooner or later will be recognized as such — I do believe ultimate control of the Sycuan pictures belongs in Sycuan's hands.



The Kumeyaay
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Village & Website

March 25, 2016

Sycuan Band of the Kumeyaay Nation
Tribal Government Office
1 Kwaaypaay Court
El Cajon, CA 92019

Dear Chairman Cody J. Martinez and Council members,

It's been 60 days since I mailed you each a copy of my reply to your January 4, 2016 offer. That leaves me to conclude you do not intend to negotiate your price or terms with me as requested — inasmuch for how your former Chairman went silent after I responded to his similar offer in 2008.

This is again personally upsetting given my loyal 20-year history serving your Tribal members, however, I did confirm from your 2016 offer:

- A. We are in agreement I own copyrights to my Sycuan photographs since your offer stated you want to buyout my copyrights to my Sycuan photographs, video footage, including all related materials (film, digital, print or otherwise) to settle my long-standing dispute with Sycuan.

THEREFORE: That leaves us with the following pressing matters to resolve:

- B. The unlicensed digital copies of my copyrighted photographs and materials that Sycuan employees and contractors have illegitimately accumulated, created, altered and/or stored on their computers across redundant user and company backups and storage media.
- C. Sycuan employees' and contractors' altering and stripping of my copyright notices, credits and licensing agreements from my photographs and materials in ways that have left my property indistinguishable from Sycuan's (or anyone else's) and falling into the public domain.
- D. The unauthorized derivative works Sycuan and its contractors have created that include my photographs, in whole or in part, including paintings, artwork, books, documentaries, TV commercials, advertisements, et cetera. And the destruction of these unauthorized works.
- E. Substantial compensation for more than a decade of Sycuan's unauthorized use and release of my materials, including 70 years of future royalty payments due to my heirs after my death.
- F. *The elephant in the room of our recent discussions:* The untruths Band members and Sycuan employees allegedly said against my good name that resulted in my unfair termination from long-established Sycuan projects that destroyed my good reputation, and ultimately my career, my successful brands, and my historical legacy.

please see page 2

Email: (Gary's personal email and cell number edited)
PO Box 81828 • San Diego, CA 92138



The Kumeyaay
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This is a big bucket of worms for sure — but all these items were presented in my detailed complaint to your Council members in February 2007, and later in my “Open Letter to Sycuan” web blog for your review. That documentation provides clear and convincing evidence these problems were created by your employees’ and contractors’ gross negligence. It also shows I protested their illicit activities in numerous memos to the offending casino executive, his subordinates, their contractors and your Band members from when I first became aware of the problems in 2000.

MOREOVER: With only a few exceptions — Sycuan and/or its contractors have:

- G. No legal rights to scan, digitalize or otherwise copy my photographs regardless of how your Band members, your employees or contractors acquired them.
- H. No legal rights to digitally store, reproduce or archive my photographs or materials.
- I. No legal rights to use or release my photographs and/or materials in any form whatsoever.
- J. No legal rights to alter my photographs and/or materials, including digitally erasing my name.
- K. No legal rights to separate or strip my copyright notices, credits and/or licensing agreements from my photographs and materials.
- L. No legal rights to produce or commission derivative works from my photographs, including paintings and drawings for private or commercial use.

In light this review, I must again request that you contact me within 30 days to continue our discussion as time remains of the essence to resolve these matters.

I understand you have the right to remain silent — but that will leave me to conclude that you, as a member of Sycuan's governing body, have officially condoned the unlawful taking and unrestricted use of my property for all time. I believe that amounts to thievery and plagiarism of my property for your Band members’ unjust enrichment, prestige and entertainment, that ultimately results in generations of your Band members cheating my family out of the substantial treasure I built in my materials and brands over decades of personal sacrifices and hard work. Or please tell me, how can you argue this otherwise?

Be assured, I remain ready and willing to have balanced, timely discussions with you to resolve our differences and settle all matters pronto. As I wrote in my previous letter, I have several ideas in mind how to conclude our unfinished business and leave Sycuan with legitimate rights to my work.

Very sincerely,

GARY G. BALLARD

cc: Cody Martinez, Rob Murphy, Charlene Worrell, LaShunna Davidson, Shu Brown, Joshua Muse, Alanna Sandoval

Email: (Gary's personal email and cell number edited)
PO Box 81828 • San Diego, CA 92138



Cody J. Martinez April 26, 2016
Chairman

Henry R. Murphy Gary Ballard
Vice Chairman PO Box 81828
San Diego, CA 92138

Charlene Worrell
Secretary Dear Gary,

LaShunna Davidson
Treasurer

Shu Brown
Council Member

Joshua Muse
Council Member

Alanna Sandoval
Councilwoman

I am in receipt of your March 25, 2016, letter as well as your earlier letter of January 4, 2016, and I am quite frankly at a loss as to how to respond. Although I understand that you are frustrated by the situation, in the absence of a counter-offer from you, the Tribal Council is left to either negotiate against ourselves or remain silent. It is only because I am sincerely interested in addressing this long running issue and in clearing up any misunderstanding of our correspondence that you may have, that I am sending you this letter.

First, the Tribal Council remains open to receiving a counter to our earlier offer and would anticipate that if you also seek resolution of this matter, the next correspondence we receive from you will contain a dollar amount that you believe is acceptable. Second, it appears that you may misunderstand the current Tribal Council's efforts to settle a dispute inherited from past leadership. Specifically, we clearly understand your position, but we are not in agreement with how you characterize the matter, but nevertheless are willing to reach a settlement and put this in the past. As such, our proposal to purchase your entire collection of images related to our Tribe and its members in exchange for an agreement that we own the copyrights to all such images is not an admission as to what copyrights either party may currently possess. Instead, it is made to clearly establish ownership and reach resolution to this dispute that, going forward, leaves no room for doubt. Additionally, in making an offer, we are not admitting any wrongdoing on the part of past or present Sycuan employees.

Our intent is to conclude this matter in a way that is satisfactory to both parties. If that is to happen, you will need to engage our Council in actual negotiations by providing a counter-offer that contains a dollar amount. I await your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Cody J. Martinez", is written over a large, faint circular stamp.

Cody J. Martinez
Chairman



The Kumeyaay
Information
Village & Website

May 9, 2016

Sycuan Band of the Kumeyaay Nation
Tribal Government Office
1 Kwaaypaay Court
El Cajon, CA 92019

Dear Chairman Martinez,

I received your April 26th letter in response to my letters dated January 25th and March 25th.

Let's set aside any misunderstandings, characterizations and the evidence for now and focus on positive discussions to make any such matters irrelevant.

Because I truly wish your Band members to receive legitimate rights to my Sycuan photographs—and because this is most likely my last chance to ensure that happens in my lifetime—I've decided to accept your lead and give you the opportunity to follow through on your offer in your own negotiating style to see where it takes us and how fast we can get there.

Therefore, my acceptable price for your copyright buyout terms for the portion of my large image bank that contains the photographs of your Band members is \$250,000. And it will settle all matters under the most uncomplicated of terms.

I substantiated that amount for you in detail in "ENCLOSURE ONE: MY PRICE" and "ENCLOSURE TWO: MY ORIGINAL ESTIMATE" of my January 25th response to your January 4th offer.

I REQUEST TO RECEIVE A COMPLETE COPY OF YOUR PROPOSED TERMS along with your dollar amount, including whatever you may want me to sign so I may review your offer in its entirety.

Time remains of the essence; I will expect to receive your response within 30 calendar days.

Very sincerely,

GARY G. BALLARD

cc: Rob Murphy, Charlene Worrell, LaShunna Davidson, Shu Brown, Joshua Muse, Alanna Sandoval

Email: (Gary's personal email and cell number edited)
PO Box 81828 • San Diego, CA 92138



The Kumeyaay
Information
Village & Website

July 9, 2016

Sycuan Band of the Kumeyaay Nation
Tribal Government Office
1 Kwaaypaay Court
El Cajon, CA 92019

Dear Chairman Cody J. Martinez, Vice Chairman Henry R. Murphy, Secretary Charlene Worrell, Treasurer LaShunna Davidson, Council Members Shu Brown and Joshua Muse, Councilwoman Alanna Sandoval:

It's been 166 days since I mailed each of you "my Price" in response to your January 4th offer. And it's been 60 days since I mailed each of you my "acceptable dollar amount" in full compliance with the instructions contained in your April 26th letter. And I've received zero response to the latter.

While I appreciate your words since I wrote to you 355 days ago for a "fair review of the facts and timely closure" of my long-standing complaint, including your written commitments to have "actual negotiations" with me to settle all matters—my gut instinct is telling me you have chosen to go silent AGAIN and/or you are protracting your process for reasons I can only speculate and conclude on.

Therefore, I am writing you this reminder in all sincerity to exhaust my efforts for a timely resolution of items B-F outlined for you in my March 25, 2016 letter so there is no misunderstanding regarding the balanced and timely nature of my requests and/or your intent to follow through on your words.

As such, I hereby request that you contact me at your earliest opportunity if you have any intention of resolving these outstanding matters because I have lost the luxury of time. I need to finalize my affairs and square this so my family does not "inherit" these sad affairs as you did.

Very sincerely,

GARY G. BALLARD

Email: (Gary's personal email and cell number edited)
PO Box 81828 • San Diego, CA 92138



Daniel J. Tucker
Chairman

Ricci LaBrake
Vice Chairman

Candelita Billingsly
Secretary

Cody J. Martinez
Treasurer

Pilar T.A. Pettiford
Council Member

Orlando Sandoval
Council Member

Deedra Tucker
Council Member

December 16, 2008

Mr. Gary Ballard
P.O. Box 81828
San Diego, CA 92138

Re: Sycuan Photo Collection

Dear Mr. Ballard:

The Sycuan Tribal Council met on December 10, 2008 to discuss your latest correspondence of December 2, 2008 regarding your request for \$250,000 as payment for all rights to the photo collection.

The Tribal Council again discussed the issues outlined in our November 25, 2008 letter to you, and reached the decision to offer \$125,000 for full rights to all photographs. This offer is not intended to minimize the quality of the photo collection, or the amount of time, effort and talent you have invested in the work. Rather, the offer reflects the economic reality of the current market. Please let us have your response to this offer at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane Vitols".

Diane Vitols
Legal Director
Sycuan Band of the Kumeyaay Nation