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FILED  
 U.S. DISTRICT COURT

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DISTRICT OF UTAH

BY: \_\_\_\_\_  
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IN THE UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF UTAH CENTRAL DIVISION

Honorable Clair M. Poulson,  
 Judge of the Duchesne County  
 Justice Court, and Derek  
 Dalton,

Plaintiff(s),

v.

Civil No. 212-CV-00497-**DAK**

DEFENDANTS APPEAL MOTION  
 FOR REMOVAL AND REMAND AND  
 TO CONSOLIDATE CASES

Ute Indian Tribe of the  
 Uintah and Ouray Reservation,  
 Business Committee for the Ute  
 Tribe of the Uintah and Ouray  
 Reservation, Tribal Court for  
 the Ute Tribe of the Uintah and  
 Ouray Reservation, Irene C. Cuch,  
 in her official capacity as Chairman  
 of the Business Committee for the  
 Ute Tribe, Ronald J. Wopsock, in  
 his official capacity as vice-  
 chairman of the Business Committee  
 for the Ute Tribe, Frances Poowewgup,  
 in her official capacity as a Member  
 of the Business for the Ute Tribe,  
 Stuart Pike, Sr., in his official  
 capacity as a Member of the for the  
 Ute Tribe, Richard Jenks, Jr., in his  
 official capacity as a Member of the  
 Business for the Ute Tribe, Phillip  
 Chimburas, in his official capacity  
 as a Member of the Business for the  
 Ute Tribe, Honorable Smiley Arrowchis,  
 in his official capacity as Chief Judge  
 of the Ute Trial Court, Dean Reed, and

Lynda Kozlowicz, Edson Gardner, Kozlowicz  
& Gardner Advocate, Inc., a Ute Tribe  
Business License, and Athenya Swain.  
and Johnny Slim.

Magistrate Judge; E. J. Furse

Defendant(s),

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**TO THE HONORABLE MAGISTRATE JUDGE EVELYN J. FURSE;**

Defendants, Edson Gardner, Attorney Pro-Se, and Lynda Kozlowicz, Attorney Pro-Se, and Athenya Slim, Attorney Pro-Se, and Johnny Slim, Attorney Pro-Se, files Appeal Motion For Removal and Remand And To Consolidate Cases as follows;

**BACKGROUND**

Defendants (Indians), attempts to remove Duchesne County Justice Court case to federal District Court. Such removal was proper. The Duchesne County Justice Court, State of Utah v. Slim, Case No. 1252010232 dated June 29, 2012 (Ruling on Motion) Appeal in this matter;

1. Defendant (Indians) filed Complaint in Ute Tribal Court against Hon. Poulson and Derek for claims arising under Ute tribal law, Title XII - Ute Indian Rule of Criminal Procedure, pursuant to Search and Seizure, Rule 31, and Arrest Rule 32, and Extradition Rule 33, Ute Law and Order Code.

2. Defendant (Indians) motion to consolidate cases in federal District Court for issues against Hon. Poulson, and Derek, to consolidate adjudication of claims arising under Ute

tribal law.

3. The Ute Tribal Court has exclusive jurisdiction over claims arising under Ute tribal law. Those claims are not subject to removal. Honorable Poulson, and Derek has not exhausted Ute tribal Court remedies required by federal and tribal exhaustion doctrine and Duchesne County Justice Court and this federal Court lacks subject matter jurisdiction in Prairie Band Potawatomi Nation v. Wagon, 402 F. 3d 1015 (10th Cir. 2005), permanently enjoined Utah from further application and enforcement of motor vehicle registration and titling laws against Indians, and who operate or own vehicle properly registered and titled under tribe's motor vehicle code. The 10th Cir. Court having appropriately balanced interest at issue in accordance with federal and tribal law and determined federal and tribal interest is promoting strong tribal economic development, self-sufficiently, and self-governance and preempting Utah State's asserted interest in public safety on the Uinta Reserve, and Uintah County Sheriff Dept. as Misdemeanor charged with violation of speeding, 41-6a-601, and expired or no license (Never Obtained), 53-3-202, as \$100.00 cash bail or cash deposited by Athenya Swain dated 9, of July 2012.

4. Plaintiff Hon. Poulson, acted as Duchesne County

officer when he issued warrant and Uintah County executed warrant against Defendant (Indian), and Execution of Warrant Against Defendant Indians violates tribal immunity by State of Utah v. Athenya Swain, Case No. 125200079 as cash bail or cash deposited \$527.00 for Athenya Swain dated 9, of July 2012. Duchesne County Justice Court's conduct was violation of Fourth Amendment is buttressed by causing execution of State warrant just as in United States v. Baker, 894 F. 2d 1144 (10th Cir. 1990), county sheriff executed search warrant on tribal property. The court held, because it was undisputed, property was tribal land and state had never obtained jurisdiction over such lands, the search warrant was in violation of Fourth Amendment.

#### **STANDARD**

5. The removal jurisdiction granted pursuant to Action for removal generally, 28 U.S.C. 1441 and Civil rights removal, 28 U.S.C. 1443 speaks only of actions brought in Duchesne County Justice Court; Becenti v. Vigil, 902 F. 2d 777 (10th Cir. 1990). Until and unless Congress includes Ute Tribal Courts in removal statutes, federal Courts cannot exercise jurisdiction over action commenced in Ute Tribal Courts. The Plaintiffs Hon. Poulson, and Derek, Duchesne County Justice Court prerequisite that's identified in 28

U.S.C. 1441 applicable to actions properly removed under 28 U.S.C. 1441. Weso v. Memominee Indian School Dist, 915 F. Supp. 73 (1995).

#### ARGUMENT

6. Defendant (Indians) reliance on 28 U.S.C. 1441 as basis of removal is proper.

7. Controlling case law in 10th Circuit says 28 U.S.C. 1441 speaks only of removal of actions first brought in Duchesne County Justice Court. Specifically, the Court ruled 28 U.S.C. 1441, which contains Duchesne County Justice Court's limitation for removal like that found in 28 U.S.C. 1441, does not extend to Ute Tribal Court. Becenti v. Vigil, 902 F. 2d 777 (10th Cir. 1990). The Ute Tribal Court is not State Court under meaning of 28 U.S.C. 1441, and therefore removal statute does not apply. Congress has amended removal statute to permit removal from courts other than State courts to include District of Columbia and Puerto Rico. Congress has power to amend removal statutes to includes Ute Tribal Courts, but at this date has not done so, therefore removal statute cannot be applied to Ute Tribal Courts.

For these reasons, Defendant (Indians) respectfully requests this Court to:


1. Deny Hon. Poulson, and Derek, Notice of Removal and


Motion to Consolidate Cases within Federal District Court.


2. Defendant (Indian) motion to remand to Ute Tribal Court.

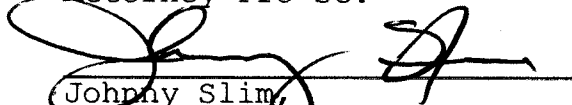
3. Declare the federal District Court lacks subject matter jurisdiction over this matter.

Respectfully submitted this day 12 of July 2012.

  
Edson Gardner, Uintah  
Attorney Pro-Se.

  
Athenya Slim,  
Attorney Pro-Se.

  
Lynda Kozlowicz,  
Attorney Pro-Se.

  
Johnny Slim,  
Attorney Pro-Se.