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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

DEBRA JONES, *et al.*, Plaintiffs, v. VANCE NORTON, *et al.*, Defendants.	**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO VERNAL CITY and UINTAH COUNTY DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS and MEMORANDUM IN SUPPORT RE: PLAINTIFFS' EIGHTH CAUSE OF ACTIONS** Civil Case No. 2:09-cv-00730-TC-EJF Judge Tena Campbell Magistrate Judge Evelyn J. Furse **ORAL ARGUMENT REQUESTED**

INTRODUCTION

This lawsuit arises from the shooting death of 21-year-old Todd R. Murray, a member of the Ute Indian Tribe. Todd Murray died of a gunshot wound to his head as he was being pursued on foot and ordered to the ground at gunpoint by off-duty Vernal City police officer Vance Norton. The shooting occurred on Indian trust lands more than 25 miles inside the northern boundary of the Ute Tribe's Uncompahgre Reservation. At the time of the shooting, eight additional law enforcement officers for the State of Utah and Uintah County were assisting in the police pursuit of Todd Murray. The officers had no probable cause or reasonable suspicion to believe Todd R. Murray had committed any crime; Murray was simply a passenger in a car driven by Uriah Kurip. The Kurip vehicle had been pursued by the Utah Highway Patrol more than 25 miles inside the Uncompahgre Reservation for a traffic speeding violation. The driver, Uriah Kurip, was taken into police custody before Defendant Norton and other officers began searching on foot for the passenger, Todd Murray. None of the nine individual Defendants were cross-deputized by the federal government or the Ute Indian Tribe to exercise law enforcement authority over Native Americans inside the Tribe's Reservation. The foot pursuit and fatal shooting of Todd Murray occurred entirely on Indian trust lands inside the Reservation. See Third Amended Complaint, Dkt. 170, ¶¶ 22-54.

The Plaintiffs in this action are Todd Murray's biological parents, Debra Jones and Arden Post, and the Estate of Todd R. Murray. The Plaintiffs are asserting claims, *inter alia*, under 42 U.S.C. §§ 1983 and 1985 for violations of Todd Murray's constitutional rights and rights under the Ute Treaties of 1863 and 1868. Id. ¶¶ 4-6.

SUMMARY OF THE PLAINTIFFS' RESPONSE

Article 6 of the Ute Treaty of 1868 waives the sovereign immunity of the United States to allow claims by individual Ute Indians seeking "reimbursement" for injuries suffered at the hands of "bad men among the whites." Through their motion, the Defendants would have this Court interpret the Treaty to both (i) confine the Plaintiffs to a "reimbursement claim" against the federal government, and (2) to preclude a direct lawsuit against the "bad men" themselves. Defendants have cited no legal authority for this proposition. The express allowance of a reimbursement claim against the federal government under the 1868 Treaty does not, by implication, nullify or negate the Plaintiffs' right under 42 U.S.C. § 1983 to seek recovery from the nine individual defendants who caused the injury. Section 1983 was enacted by Congress as part of the Civil Rights Act of 1871. Section 1983 is not itself a source of substantive rights; instead § 1983 is a remedial statute that provides a federal remedy for the vindication of rights conferred by federal law. As explained below, the treaties between the United States and the Ute Indians became federal law when the U.S. Senate ratified those treaties in 1864 and 1868. The treaties recognize the Ute Indians' aboriginal land rights and, in addition, confer rights under federal law to individual Ute tribal members. In turn, Section 1983 allows the Plaintiffs to vindicate their treaty-based federal rights under Count 8 of the Third Amended Complaint. For these reasons, as further explained below, Count 8 should not be dismissed for failure to state a cause of action.

I. PLAINTIFFS ARE NOT LIMITED TO EQUITABLE RELIEF, BUT CAN RECOVER DAMAGES UNDER § 1983

The Defendants broadly assert that any cause of action available to the Plaintiffs based on the Ute Treaties would "not provide for damages against a non-contracting party." Defs' Motion, Dkt. 240, p. 4. However, the only authority cited by Defendants in support of their assertion is *Skokomish Indian Tribe v. United States*, 410 F.3d 506, 513 (9th Cir. 2005). *Skokomish*, however, did not hold that Indian tribes and tribal members are legally barred from recovering damages from third-parties for violations of Indian treaties. To the contrary, the majority in *Skokomish* emphasized explicitly that their holding rested on the specific facts of *Skokomish* and the language of the Indian treaty at issue in the case. The *Skokomish* majority said the dissenting judges in the case were mistaken in their "description of our opinion as holding that 'Indian tribes and their members cannot, under federal law, sue municipalities for damages for violation of rights secured by Indian tribes.'" The majority went on to state:

> We analyze a specific set of claims brought under a specific treaty, and we thus have no occasion to consider whether different rights of action might be implied from other treaties.

Id. at 512 n 5. As explained below, the Ute Treaties of 1863 and 1868 fully support the Plaintiffs' § 1983 claim under Count 8 of the Third Amended Complaint. Dkt. 170, pp. 27-28.

The Defendants have cited no authority, and the Plaintiffs are aware of none, which holds that an Indian treaty can only be enforced by one signatory against the other signatory, whether for equitable relief or damages. There is ample authority,

including Supreme Court authority, to the contrary. In *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226 (1985) (*County of Oneida II*), the Supreme Court affirmed a damage award against two counties in the State of New York based on the counties' wrongful violation of the Oneida Nation's possessory rights to their lands under federal common law. The first sentence of Justice Powell's opinion in *County of Oneida II* explains: "These cases present the question whether three Tribes of the Oneida Indians may bring a suit *for damages* for the occupation and use of tribal land allegedly conveyed unlawfully in 1795." 470 U.S. at 229 (emphasis added). To answer this question, the Court analyzed the historical availability of federal causes of action to enforce Indian aboriginal rights, whether secured by treaties or not, and concluded that "Indians have a federal common[ ] law right to sue to enforce their aboriginal land rights." *Id*. at 236. Consequently, the Oneidas' monetary damages against third-parties was upheld based on the third-parties' violation of the Oneidas' "possessory rights" to their aboriginal lands "based on federal common law." *Id.* at 236.

II. FEDERAL LAW INCLUDES INDIAN TREATIES

Treaties between the United States and Indian tribes are mentioned expressly in the U.S. Constitution as among the laws that comprise "the supreme Law of the Land." The Supremacy Clause in the Constitution states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. CONST. art. VI, cl. 2 (emphasis added).

Also included under federal law is the 1894 Utah Enabling Act which the U.S. Congress enacted to specify the conditions under which the State of Utah would be admitted to statehood. Section 2 of the Enabling Act states:

> That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to . . . all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain . . . under the absolute jurisdiction and control of the Congress of the United States.

Language identical to this was in turn adopted in the Utah State Constitution, Article III.

Consequently, as a matter of both federal and state law, the nine individual Defendants who are listed under Count 8 of the Plaintiffs' Third Amended Complaint, Dkt. 170, pp. 27-28, were obligated to respect the rights created by, or reserved to, Todd Murray and his family members under the Ute Treaties of 1863 and 1868. It is equally clear that rights secured through Indian treaties can be vindicated under 42 U.S.C. § 1983.

The Plaintiffs allege that none of the nine individual Defendants were cross-deputized to exercise law enforcement powers inside the Ute Tribe's Reservation. Dkt. 170, p. 13, ¶ 61. The Plaintiffs further allege that:

> Each [Defendant] relied upon the law enforcement status, credentials, and powers conferred upon him by the State of Utah in undertaking the pursuit, and each officer acted affirmatively to exercise the law enforcement status, credentials, and powers conferred upon him by the State of Utah, notwithstanding that the pursuit of the passenger took place inside the Uintah and Ouray Reservation where none of the officers had law enforcement authority over tribal members.

Third Amended Complaint, Dkt. 170, p. 10, ¶ 44. The Plaintiffs further allege:

> [T]he Decedent Todd R. Murray and his survivors suffered egregious harm through the actions of the Defendants. By their actions or omissions, the Defendants separately and collectively, caused, or failed to prevent, the commission of wrongs against Todd R. Murray in contravention of Murray's right to be free from such wrongs under the Ute Treaty of 1868.

Third Amended Complaint, Dkt. 170, p. 28, ¶ 132. The Plaintiffs allege that as a direct and proximate result of the Defendants' conduct, Todd Murray died from a gunshot wound to the head.

III. THE PLAINTIFFS' TREATY-BASED FEDERAL RIGHTS CAN BE VINDICATED UNDER 42 U.S.C. § 1983

Section 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Supreme Court has said "there can be no doubt that" § 1983, as a remedial statute, "was intended to provide a remedy, *to be broadly construed*, against all forms of official violation of federally protected rights." *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 700-701 (1978) (emphasis added). Consonant with this understanding, Supreme Court precedent and cases from lower federal courts make clear that suits can be maintained, separately and under § 1983, for the violation of well-defined treaty rights. *See, e.g., United States v. Winans*, 198 U.S. 371 (1905) (suit to enforce Indian fishing rights); *Oyler v. Finney*, 870 F. Supp. 1018 (D.Kan. 1994), *aff'd,* 52 F.3d 338 (10th Cir. 1995) (unpublished table decision) (action by individual tribal member for the redress of constitutional and treaty right violations); *United States v. Washington*, 935

F.2d 1059 (9th Cir. 1991) (§ 1983 action to enforce fishing rights); *Hoopa Valley Tribe v. Nevins*, 881 F. 2d 657, 662 (9th Cir. 1989) (§ 1983 protects individual rights secured by Treaty against government intrusion); *Mille Lacs Band of Chippewa Indians v. Minnesota*, 853 F. Supp. 1118 (D. Minn. 1994), *aff'd*, 124 F.3d 904 (8th Cir. 1997), *aff'd*, 526 U.S. 172 (1999) (§ 1983 action to enforce treaty rights); *Canadian St. Regis Band of Mohawk Indians ex rel. Francis v. New York*, 278 F. Supp.2d 313 (N.D.N.Y. 2003) (§ 1983 action); *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin*, 663 F. Supp. 682 (W.D. Wis. 1987), *appeal dismissed*, 829 F.2d 601 (7th Cir. 1987) (per curiam) (§ 1983 action to enforce hunting and fishing rights); *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969), *aff'd in part*, 529 F.2d 570 (9th Cir. 1976) (per curiam) (action to define treaty rights).

See also Kimball v. Callahan, 493 F.2d 564, 565 (9th Cir. 1974) (suit brought by individual Indians against officers of the State of Oregon to enforce treaty rights). *Kimball* was later cited by the Supreme Court in support of the proposition that "[s]uch treaty rights [as the right to hunt and fish] can be asserted by Dion as an individual member of the Tribe." *United States v. Dion,* 476 U.S. 734 n. 4 (1986).

IV. THE RULES OF CONSTRUCTION THAT APPLY TO INDIAN TREATIES

Because it will be necessary for the Court to construe the Treaties of 1863 and 1868 between the United States and the Ute Indians, it is essential to understand the rules of construction that apply to treaties generally, and to treaties with Indian tribes in particular.

A. Special Rules of Interpretation Apply to Treaties with Indian Tribes

The Supreme Court has made clear that Indian treaties are unique, governed by different canons of construction than those that apply to statutes and to other treaties. *See, e.g., County of Oneida v. Oneida Indian Nation*, 470 U.S. at 247. Owing to the special relationship between the United States and Indian tribes, Indian treaties must be interpreted liberally in favor of Indians. *Choctaw Nation v. United States*, 318 U.S. 423, 431-432 (1943); *Choate v. Trapp*, 224 U.S. 665, 675 (1912).

Any ambiguities in the language of an Indian treaty must be resolved in favor of the Indians. *Mille Lacs Band of Chippewa Indians*, 526 U.S. at 196-203; *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, (1973); *Carpenter v. Shaw*, 280 U.S. 363, 367 (1930); *Winters v. United States*, 207 U.S. 564, 576-577 (1908).

Further, Courts must endeavor "to give effect to the terms as the Indians themselves would have understood them." *Mille Lacs Band of Chippewa Indians,* 526 U.S. at 196; *Choctaw Nation v. Oklahoma,* 397 U.S. 620, 631 (1970).

The Supreme Court has made clear that while a court should look to the parties' choice of words," it should also consider the "larger context that frames the Treaty," including its "history, purpose and negotiations." *Mille Lacs Band of Chippewa Indians*, 526 U.S. at 196-203.

In the absence of "explicit statutory language," *Washington v. Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U.S. 658, 690 (1979), the Supreme Court will not find a Congressional abrogation of Indian treaty rights. *Menominee Tribe v. United States*, 391 U.S. 404 (1968). *See generally* COHEN'S HANDBOOK OF

FEDERAL INDIAN LAW § 2.02[1] and [2], at 113-119 (Nell Jessup Newton ed., 2012) (hereinafter "COHEN'S HANDBOOK").

B. Treaties Are Not Locked In Time To The Era of The Treaty's Execution

The jurisprudence governing treaties holds that it is unjustifiable "for a court to view a treaty as frozen in the year of its creation." *Reed v. Wiser,* 555 F.2d 1079, 1090 (2d Cir.1977), *cert. denied,* 434 U.S. 922 (1977) (quoting *Day v. Trans World Airlines,* 528 F.2d 31, 35 (2d Cir.1975)). In *Day* and *Reed,* the Second Circuit applied the Warsaw Convention indemnification provisions for air-travel to injuries occurring during terrorist attacks, despite the fact that the risk of terrorist attacks is a "modern day reality" that was "unforeseeable by the Warsaw framers" when the treaty was negotiated and ratified in 1929. *Reed,* 555 F.2d at 1090; *Day,* 528 F.2d at 37-38. Likewise, courts have held that Indian treaties are "not static." *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin,* 653 F.Supp. 1420, 1430 (W.D. Wis.1987). Thus it has been held that modern hunting and fishing techniques may be employed by tribes under treaties entered into during the 1800s. *See Elk v. United States*, 87 Fed. Cl. 70, 78-82 (Fed. Cl. 2009) (interpreting language in the Fort Laramie Treaty of 1868 identical to the Ute Treaty of 1868 to provide individual tribal members with a remedy for any wrongs committed by "bad men").

V. THE UTE TREATIES CONFER RIGHTS ON INDIVIDUAL UTE INDIANS

Three separate treaties were negotiated between the United States and the Ute Indians. Two of those Treaties expressly grant rights to individual Ute tribal members. On October 7, 1863, a Treaty between the United States and the Tabeguache Band of

Ute Indians was executed and became federal law upon its ratification by the U.S. Senate on March 25, 1864. 13 Stat., 673. See Exhibit 1. The United States executed a third, and final, Treaty with various bands of Ute Indians on March 2, 1868, and that Treaty became federal law upon its ratification on July 25, 1868. 15 Stats., 619. See Exhibit 2.

The 1868 Treaty, Art. 1, expressly reaffirmed the earlier 1863 Treaty with the Tabeguache Band of Utes. In addition, the 1868 Treaty incorporated and extended the terms of the 1863 Treaty to all the bands of Ute Indians who were signatories to the 1868 Treaty:

> All of the provisions of the treaty concluded with the Tabequache band of Utah Indians October seventh, one thousand eight hundred and sixty-three, as amended by the Senate of the United States and proclaimed December fourteenth, one thousand eight hundred and sixty-four, which are not inconsistent with the provisions of this treaty, as hereinafter provided, are hereby re-affirmed and declared to be applicable and to continue in force as well to the other bands, respectively, parties to this treaty, as to the Tabequache band of Utah Indians.

Exhibit 2, p. 2.

It is significant that in the 1860s, when the Ute Treaties were executed and ratified, American Indians were not considered to be citizens of the United States.[1] Because they were not citizens, Native Americans did not possess the same political and civic rights as other Americans. As explained in COHEN'S HANDBOOK:

> Through the nineteenth century, the prevailing view held tribal affiliation to be inconsistent with United States and state citizenship as a matter of policy.
>
> * * *

[1] Citizenship was not granted to American Indians until 1924 when Congress enacted a statute making Indians citizens of the United States. Act of June 2, 1924, 43 Stat. 253 (superseded 1940).

> Many states limited or denied rights to all nonwhite persons without regard to citizenship. . . . Prior to 1871, most Indians were considered to be citizens of separate political communities and not part of the ordinary body politic of the states or of the United States.

COHEN'S HANDBOOK § 14.01[1] and [2], at 922, 924.

Consequently, when the Ute Treaties were executed and ratified, individual Ute Indians lacked the status and the political and civic rights afforded to other American citizens. It was against this backdrop that the Ute leaders negotiated for—and the United States granted—certain enumerated rights to individual Ute Indians in return for the Ute bands' cessions of land to the federal government. Article 6 of the 1863 Treaty (which was extended to all Ute Indians under terms of the 1868 Treaty) grants a right of legal redress for harms committed upon individual Ute Indians. Article 6 begins with these words:

> That the friendship which is now established between the United States and the Tabeguache band of Utah Indians should not be interrupted by the misconduct of individuals, it is hereby agreed that for injuries done no private revenge or retaliation shall take place. . . .

Article 6 then provides:

> [I]f any robbery, violence, or murder shall be committed on any Indian or Indians belonging to said band[s], the person or persons so offending shall be tried, and if found guilty, shall be punished in like manner as if the injury had been done on a white man.

Article 10 goes even further and expressly grants a right under federal law to "peaceable possession" to individual Ute Indians who conform to the expectation of peaceful co-existence required by the Treaty:

> All the Indians of said band who may adopt and conform to the provisions of this article shall be protected in the quiet and peaceable possession of their said lands and property.

Exhibit 1, p. 5.

The subsequent 1868 Treaty states that the lands reserved by the federal government for a Ute homeland are "hereby set apart for the absolute and undisturbed use and occupation of the Indians herein named." Exhibit 2, 1868 Treaty, Art. 2, p. 3. The Treaty then states that no individuals except persons authorized by the federal government "shall ever be permitted to pass over, settle upon, or reside" on the lands set aside for the Ute homeland. Exhibit 2, 1868 Treaty, Art. 2, p. 3. Article 6 of the 1868 Treaty states that:

> If bad men among the whites or among other people, subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.

Exhibit 2, p. 4.

Similar "bad men" clauses are contained in all Indian Treaties from 1868 forward. The historical basis for the inclusion of such clauses is discussed at length in *Elk v. United States*:

> The [Fort Laramie] Treaty of 1868 "was concluded at the culmination of the Powder River War of 1866-1867, a series of military engagements in which the Sioux tribes, led by their great chief, Red Cloud, fought to protect the integrity of earlier-recognized treaty lands from the incursion of white settlers." (citation omitted) In 1867, various tribal leaders spoke to Congress about the mistreatment of their people by white men. Their testimony documented the mistreatment of the women in their nations, who were killed, mutilated, otherwise attacked and coerced into

> prostitution and other sexual relationships with United States soldiers. This testimony was well-documented in Conditions of the Indian Tribes: Report of the Joint Special Committee Appointed Under Joint Resolution of March 3, 1865, S. Rep. 39-156 (1867), commonly known as the Doolittle Commission Report. (citations omitted) The sexual offenses committed by whites were particularly pernicious as they led to the spread of syphilis, which ravaged the women and men of the tribes alike, causing, in turn, many deaths. (citation omitted) Finding that a "large majority of cases [of] Indian wars are to be traced to the aggressions of lawless white men, "the report urged that various steps be taken "to preserve amity" and "save the government from unnecessary and expensive Indian wars." (citation omitted) (emphasis in original).

Elk v. United States, 87 Fed. Cl. At 80. The bad man clauses in Indian treaties have been interpreted to provide a remedy to individual injured Indians since at least 1972, meaning that the right of recovery under bad man clauses is a well-defined treaty right. *See Hebah v. United States*, 428 F.2d 1334, 1337 (Ct. Cl. 1972). Such clauses in Indian treaties address "the rights of and obligation to individual Indians." *Id.*

Returning now to the Ute Treaties of 1863 and 1868, and applying the rules of Indian treaty construction, this Court must give effect to the treaty language as the Ute Indians would have understood the language. The Court must also apply the individual rights recognized and conferred under the Ute Treaties of 1863 and 1868 to modern day realities. Applying those rules here, it is clear that the 1863 and 1868 Treaties grant individual Ute tribal members the following rights:

(1) a right to be secure in their homes and tribal homelands and to be free from unlawful incursions, and

(2) a right in individual Ute Indians to seek legal redress for harms suffered as the result of non-Indians entering onto the Ute Reservation without legal authority and causing them injury.

Article 10 of the 1863 Treaty grants "all" Ute Indians a right that "shall be protected" in the "quiet and peaceable possession of their said lands and property." See Exhibit 1, p.5, Art. 10. Article 2 of the 1868 Treaty expands upon the 1863 Treaty language by granting the Utes a right to the "absolute and undisturbed use and occupation" of their Reservation lands. See Exhibit 2, p. 3, Art. 2).

In Article 6 of the 1863 Treaty, the Utes agreed to forego "private revenge or retaliation" for injuries they suffered as the result of "misconduct of individuals." See Exhibit 1, p.3, Art. 6. In return, the federal government promised that individual Ute Indians would have a right to legal redress for "any robbery violence, or murder" committed "on an Indian or Indians" belonging to the Ute Indian bands. Id. Article 6 of the 1868 Treaty states that any person violating the territorial integrity of the Reservation and causing harm to individuals shall be "punished according to the laws of the United States." (emphasis added)

The laws of the United States certainly include 42 U.S.C. § 1983. Although there is no reference in the Ute Treaties to civil redress, it is also quite apparent why there is no mention of civil redress. When the Ute Treaties were ratified in the 1860s, individual Ute Indians were barred from pursuing civil remedies against wrongdoers because Ute Indians, as non-citizens, did not have access to American courthouses. *See Cherokee*

Nation v. Georgia, 30 U.S. 1, 19 (1831) (holding that U.S. courts lacked jurisdiction over Indian claims).

In their motion, the Defendants argue that the Plaintiffs have "misread" the Ute Treaties. Defs' Motion, Dkt. 240, p. 3. The Plaintiffs respectfully suggest that, to the contrary, it is the Defendants who misread the Treaties (or fail to acknowledge the rules to construction applicable to Indian treaties). The Defendants would have this Court construe the Ute Treaties as if they were "frozen in time" to a period almost 150 years ago when Indian tribes and tribal members were denied the same civil and political remedies that were available to other injured individuals. Such a construction violates the rule that Indian treaties must be interpreted liberally in favor of Indians. It also violates the rule that no treaty should be frozen in time to its date of execution.

Through this action the Plaintiffs seek civil redress against the nine individual Defendants who, lacking any legal authority and lacking probable cause, pursued Todd Murray at gunpoint on the tribal trust lands of the Uintah and Ouray Indian Reservation, a pursuit that culminated in Todd Murray's tragic death by gunshot.

The Defendants argue that the bad men clause in the Ute Treaty of 1868 allows them to escape legal responsibility for their actions, saying, "The so-called "bad man" is not liable for damages, rather it is the federal government that is liable for damages." Defs' Motion, Dkt. 240, p. 6. This argument does not square well with modern realities. Today when there is so much angst over federal budget deficits and debts, when individual Indians are now accorded full rights of citizenship including access to the legal system, the financial liability for injuries to Native Americans should fall,

exclusively or primarily, not on the federal government, but on the individuals who cause harm by abridging treaty rights. It is not a sound policy to say that non-Indians can cause harm to Indians with impunity because the financial cost of such harms fall on the federal government alone.

Section 1983 provides a remedy for the abridgement of rights granted under federal law. The Ute Treaties of 1863 and 1868 recognize and confer certain rights upon individual Ute Indians. Those individual rights include (1) a right to be secure in their homes and tribal home lands and to be free from unlawful incursions, and (2) a right to seek legal redress for harms suffered as the result of non-Indians entering onto the Ute Reservation without legal authority and causing them injury. These are well-defined treaty rights which the Plaintiffs are entitled to vindicate under 42 U.S.C. § 1983.

CONCLUSION

Based on the foregoing arguments and legal authorities, the Plaintiffs respectfully urge this Court to deny the Defendants' motion for a summary dismissal of Count 8 of the Third Amended Complaint.

Respectfully submitted this 25th day of January, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January, 2013, I electronically filed the foregoing **PLAINTIFFS' MEMORANDUM IN OPPOSITION TO VERNAL CITY and UINTAH COUNTY DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS and MEMORANDUM IN SUPPORT RE: PLAINTIFFS' EIGHTH CAUSE OF ACTIONS**, with the Clerk of the Court using the CM/ECF System which will send notification of such filing to all parties of record as follows:

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