

# Exhibit A

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*Attorney for Plaintiffs*

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IN THE EIGHTH DISTRICT COURT  
FOR DUCHESNE COUNTY-ROOSEVELT  
STATE OF UTAH

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RYAN URESK HARVEY, ROCKS OFF INC.  
and WILD CAT RENTAL, INC.,

Plaintiffs,

vs.

UTE INDIAN TRIBE OF THE UINTAH and  
OURAY RESERVATION; DINO  
CESSPOOCH, in his official capacity as  
UTERO Commissioner and in his individual  
capacity; JACKIE LAROSE, in his official  
capacity as UTERO Commissioner and in his  
individual capacity; SHEILA WOPSOCK, in  
her official capacity as UTERO Director and in  
her individual capacity; and DOES 1 through  
25,

Defendants.

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

Case No.:

Judge:

**COME NOW** the Plaintiffs, Ryan Uresk Harvey, ("Ryan"), Rocks Off, Inc., and Wild Cat Rentals, Inc., (the businesses collectively as "Rocks Off") by and through their counsel of

record, John D. Hancock of and for the law firm of John D. Hancock Law Group, PLLC, and hereby submits their Verified Complaint for Declaratory and Injunctive Relief as follows:

### **I. THE PARTIES AND VENUE**

1. Plaintiff, Ryan Uresk Harvey (“Ryan”) is, and at all times mentioned herein, an individual domiciled in Duchesne County, State of Utah.

2. Plaintiff, Rocks Off, Inc. (“Rocks Off”) is, and at all times mentioned herein, a Utah corporation, with its principal place of business located at 10643 South 4900 East, Myton, Utah 84052.

3. Plaintiff, Wild Cat Rentals, Inc. (“Wild Cat”) is, and at all times mentioned herein, a Utah corporation with its principal place of business located at 10643 South 4900 East, Myton, Utah 84052.

4. Defendant, Ute Indian Tribe of the Uintah and Ouray Reservation (“Ute Tribe”), is a federally recognized tribe with reservation lands located in Uintah County, Utah, and Duchesne County, Utah.

5. Defendant, Dino Cesspooch (“Commissioner Cesspooch”), is an appointed Ute Tribal Employment Rights Office (“UTERO”) Commissioner of the Ute Tribe.

6. Defendant, Jackie LaRose (“Commissioner LaRose”), is an appointed UTERO Commissioner of the Ute Tribe.

7. Defendant, Sheila Wopsock (“Director Wopsock”), is the appointed Director of the UTERO Commission.

8. The true names and capacities of the Does 1 through 25 are unknown to Plaintiffs who, therefore, sue such Defendants by such fictitious names. Plaintiffs will amend this Complaint to show their true names and capacities when ascertained. Plaintiffs are informed and believe and thereon allege that each of the Defendants designated as DOE is responsible in some manner for the events and happenings herein referred to, and thereby proximately caused and continue to cause injuries to Plaintiffs as alleged herein.

9. Venue is proper in the Eighth Judicial District Court, Duchesne County, Utah, Roosevelt Division, because the acts and occurrences complained of herein occurred in Duchesne County.

## **II. GENERAL ALLEGATIONS**

10. Duchesne County, Utah, and Uintah County, Utah, are located in the Uintah Basin.

11. The major economic force in the Uintah Basin is the oil and gas industry.

12. There are approximately 34,524 residents in Uintah County.

13. There are approximately 19,244 residents in Duchesne County.

14. The Uintah Ouray reservation of the Ute Tribe is located within the Uintah Basin.

15. There are approximately 3,000 enrolled members of the Ute Tribe.

16. Ryan and his wife are the sole shareholders of Rocks Off and Wild Cat.

17. Rocks Off owns or leases gravel pits and rock crushing operations (the "Pits") in Duchesne County, Utah, and Uintah County, Utah.

18. The Pits are located on private fee land.
19. The Pits are located on lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation.
20. The lands the Pits are located on are not Indian Country as defined under 18 USC § 1151 and *Hagen v. Utah*, 510 U.S. 114 S. Ct. 958 (1994).
21. The majority of Rocks Off revenue is generated by providing sand and gravel (the "Products") to oil and gas companies.
22. The Rocks Off customers transport the Products to various locations throughout Duchesne County and Uintah County.
23. The Rocks Off business does not require Rocks Off to access or even pass through Tribal land.
24. Wild Cat leases heavy equipment.
25. Wild Cat conducts its business on private fee land that is not located within Indian Country as defined in 18 USC § 1151 and *Hagen v. Utah*, 510 U.S. 114 S. Ct. 958 (1994).
26. The individuals/entities that lease Wild Cat equipment may or may not utilize this equipment on Tribal land.
27. To the extent the Wild Cat lessees utilize the Wild Cat equipment on Tribal land, the lessees would be responsible for obtaining appropriate permissions and certifications from the Ute Tribe.

28. Since in or about September 2012, Commissioner Cesspooch has harassed, threatened, bullied, and intimidated Plaintiffs by threatening to utilize his position as a UTERO Commissioner to “shut down” Plaintiffs’ businesses.

29. Ryan attempted to explain to Commissioner Cesspooch that Rocks Off operations are conducted on private land outside the jurisdiction of the Ute Tribe.

30. Ryan also informed Commissioner Cesspooch that Rocks Off does not have to access or travel through Tribal land as part of its operations.

31. Ryan further informed Commissioner Cesspooch that Rocks Off Products are transported by the buyer to the intended location so that the businesses never pass through Tribal Land.

32. In spite of this information, Commissioner Cesspooch continued to threaten to “shut down” Plaintiffs’ businesses and to confiscate Plaintiffs’ equipment if Rocks Off was not UTERO certified.

33. Alarmed by these threats, Ryan and Allen Smith met with Commissioner Cesspooch at the UTERO office in or about November 2012.

34. Commissioner Cesspooch again threatened that he was going to shut down Plaintiffs’ businesses and impound all of Rocks Off front end loaders if Ryan did not obtain UTERO certification.

35. The front end loaders Commissioner Cesspooch threatened to impound are all located on private fee land; the Pits.

36. Allen Smith was a witness to these comments at the meeting with Commissioner Cesspooch.

37. Ryan was under duress based upon Commissioner Cesspooch's threats and decided to obtain UTERO certification.

38. At Ryan's direction, the Rocks Off secretary, Mindy Allred, went to the UTERO office in or about November 2012.

39. Rocks Off was charged \$400.00 for a Ute Business License, approximately \$700.00 for Access Permits, and forced to pay a \$2,500.00 "donation" to the UTERO Commission.

40. Shortly after Rocks Off obtained its UTERO Certification, Ute Business License, and Access Permits, Ryan was accosted by Commissioners Cesspooch and LaRose at the China Star restaurant in Roosevelt, Utah.

41. Commissioner Cesspooch again threatened Ryan that he had better get Tribal permits.

42. Ryan told Commissioner Cesspooch that Rocks Off had obtained its UTERO Certification and Access Permits, and that he was the UTERO Commissioner that had signed the permits.

43. A few hours after being accosted by Commissioner Cesspooch at the Roosevelt restaurant, Commissioner Cesspooch called Ryan and told him that the Certification and Access Permits were no good and that his signature had been forged.

44. Commissioner Cesspooch demanded that Ryan immediately meet him at the UTERO office.

45. Ryan refused to meet Commissioner Cesspooch at the UTERO office.

46. That evening Ryan met with Commissioner Cesspooch and Commissioner LaRose at the Frontier Grill in Roosevelt, Utah.

47. Commissioner Cesspooch informed Ryan at that point that the UTERO Certification, Ute Business License, and Access Permits obtained by the Rocks Off secretary were good, despite his earlier allegations that his signature was forged.

48. In or about February of 2013, Ryan was traveling eastbound on Highway 40 in Roosevelt.

49. Commissioner Cesspooch pulled his vehicle next to Ryan's and aggressively pointed for him to pull over.

50. Commissioner Cesspooch then pulled in front of Ryan's vehicle and dangerously braked his vehicle.

51. Commissioner Cesspooch pulled into the IFA parking lot located in Roosevelt, Utah, and motioned for Ryan to follow.

52. Ryan followed Commissioner Cesspooch to the IFA parking lot.

53. Commissioner Cesspooch attempted to extort money from Ryan in the IFA parking lot saying that he "sure needed a good riding horse."



54. Other than extorting Ryan, there was no other purpose for Commissioner Cesspooch to stop him.

55. Ryan refused to give Commissioner Cesspooch any money at that time.

56. A couple of weeks after refusing to pay Commissioner Cesspooch, Ryan received a letter from the UTERO Commission dated March 15, 2013.

57. The UTERO Commission accused Ryan of engaging in “fraudulent activities, including the submission offalse [of false] and inaccurate official tribal, state and federal documents.”

58. Ryan denies these allegations.

59. On March 20, 2013, the UTERO Director threatened that any oil and gas companies that utilized Plaintiffs’ Products would be assessed “. . . penalties and/or sanctions . . . to the fullest extent of the law.”

60. Since the March 20, 2013, threats by Director Wopsock, the oil and gas companies have refused to allow any business who leases Plaintiffs’ equipment or utilizes Plaintiffs’ Products to provide services.

61. Since the March 20, 2013, correspondence from the UTERO Director, Plaintiffs’ have lost approximately \$80,000.00 per day in revenues.

62. Ryan has been contacted by oil and gas companies, Newfield, Devon, Crescent, and Barry and told that they cannot do business with Plaintiffs or work with anyone that does business with Plaintiffs based on the action of the UTERO officials.

63. Plaintiffs have been substantially and irreparably harmed based upon the UTERO Directors and Commissioners wrongful interference with Plaintiffs' businesses, and continue to suffer substantial and irreparable harm.

64. Ryan has had two or three telephonic discussions with Commissioner Cesspooch since March 20, 2013.

65. Commissioner Cesspooch was unable to provide Ryan with a single reason why the UTERO officials terminated Plaintiffs' businesses.

66. The UTERO Director has called Ryan and demanded the serial numbers to all of the equipment leased through Wild Cat Rentals.

67. Plaintiffs lease some equipment to Kaufusi Excavating, Inc., which is a Utah corporation wholly owned by enrolled Ute Tribe members.

68. Plaintiffs also lease equipment to Shane Reary ("Shane"), a Non-Indian.

69. Shane contacted Ryan subsequent to March 25, 2013, and told him that he had been threatened by Commissioner Cesspooch.

70. Commissioner Cesspooch threatened Shane that he would be shut down if he used Ryan's equipment.

71. Commissioner Cesspooch threatened that if Shane did not come in and meet with him at the UTERO office immediately, he would be forcefully escorted to the office by Ute Tribe officials.

72. Shane met with Commissioner Cesspooch and provided him with identification numbers to all of the equipment he leases from Plaintiffs.

73. Ryan was contacted by Brad Allred of Nelson Construction, Inc., on March 28, 2013, and informed that the UTERO Director had told them they could not utilize Plaintiffs' rock crusher on its pit that is located on private ground or Nelson Construction, Inc. would be shut down.

74. Ryan is aware of incidents where UTERO officials have engaged in a pattern and practice of extorting money from area businesses in a similar manner by threatening to "shut down" their operations.

75. Based on information and belief, Commissioner Cesspooch has demanded 10% of area businesses gross revenues in return for promises that he will keep them working and UTERO compliant.

76. Ryan is aware that UTERO officials dictate to oil and gas companies which contractors will be awarded bids and which contractors are not to be used.

77. Based on information and belief, Commissioner Cesspooch is a convicted felon.

78. Plaintiffs' counsel contacted Director Wopsock to attempt an informal resolution on April 2, 2013.

79. Plaintiffs' counsel was informed that Ryan would need to meet with UTERO alone and that he would not be allowed to be accompanied by counsel.

80. Commissioner LaRose, at all relevant times, owned an interest in an oil & gas service company; LaRose Construction, Inc., a Utah corporation, and a Certified Firm with Indian Preference under UTERO.

81. Based on information and belief, Commissioner LaRose received bribes and work from Huffman Enterprises ("Huffman"), Inc., a competitor of Plaintiffs, in exchange for Commissioner LaRose abusing his position as UTERO Commissioner and diverting business from Plaintiffs to Huffman.

82. Based on information and belief, Commissioner LaRose received an economic interest in a competing gravel pit ("LaRose Gravel Pit") located on private fee land which commenced operations immediately after Plaintiffs operations were "shut down" by Director Wopsock.

83. Based on information and belief, Commissioner LaRose and Director Wopsock conspired to abuse their UTERO positions to eliminate Plaintiffs as competitors of the LaRose Gravel Pit.

84. Based on information and belief, Commissioner LaRose, Commissioner Cesspooch, and Director Wopsock, conspired to abuse their UTERO positions to destroy Plaintiffs' businesses for refusing to be extorted by Commissioner Cesspooch.

85. Commissioner Cesspooch, at all relevant times, owned an interest in an oil & gas service company; D Ray Enterprises, L.L.C., a Utah limited liability company, and a Certified Firm with Indian Preference under UTERO.

### III. JURISDICTION

86. This Court has jurisdiction as a court of general jurisdiction and the Ute Tribe has waived sovereign immunity pursuant to Section 13.3 of the UTERO Ordinance, 10-002. *See* Ordinance 10-002 attached hereto as Exhibit "1".

87. This Court has jurisdiction over the tribal officials based on the tribal officials violation of federal and state law, the acts complained of by the tribal officials are *ultra vires*, and the unlawful and unauthorized conduct has caused and continues to cause substantial and irreparable harm to non-Indian Plaintiffs business activities on private fee land. *Puyallup Tribe v. Department of Game of the State of Washington*, 433 U.S. 165 (1977); *Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Community*, 991 F.2d 458 (8<sup>th</sup> Cir. 1993).

88. It is not necessary for Plaintiffs to exhaust the remedies that might otherwise be available to them in Ute Tribal Court because the actions of the Defendants patently violate express jurisdictional prohibitions against the Ute Tribe's assertion of jurisdiction over Plaintiffs. *See National Farms Union Ins. Cos. V. Crow Indian Tribe*, 471 U.S. 845 (1985).

89. The relief sought by Plaintiffs are authorized pursuant to Utah Code Title 78B, Chapter 6, Part 4.

90. Plaintiffs rights guaranteed to them under the United States Constitution and the State of Utah Constitution have been violated and continue to be violated.

#### IV. FIRST CLAIM FOR RELIEF

##### (REVIEW OF UTE TRIBE JURISDICTION OVER NON-INDIAN PLAINTIFFS)

91. Plaintiffs incorporate by reference the allegations set forth, *supra*.

92. An existing and actual controversy exists within this Court's jurisdiction concerning the Ute Tribes exercise of jurisdiction over the business activities of non-Indian Plaintiffs.

93. Plaintiffs seek a declaration that the Ute Tribe has exceeded the lawful limits of its jurisdiction by regulating and/or penalizing private business activities of non-Indians that occur on lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation which is not Indian Country as defined in 18 USC § 1151.

94. Plaintiffs seek a declaration that the Ute Tribe has exceeded the lawful limits of its jurisdiction by regulating and/or penalizing private business activities of non-Indians that occurs on lands allotted to individual Indians that have passed into fee status to non-Indians after 1905 within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10<sup>th</sup> Cir.).

95. Plaintiffs seek a declaration that the Ute Tribe has exceeded the lawful limits of its jurisdiction by regulating and/or penalizing private business activities of non-Indians that occurs on State land within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.).

96. Plaintiffs seek a declaration that the Ute Tribe has exceeded the lawful limits of its jurisdiction by regulating and/or penalizing private business activities of non-Indians that occurs on Federal land not held in trust for the benefit of the Ute Tribe within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.).

97. Plaintiffs seek a declaration that the Ute Tribe has exceeded the lawful limits of its jurisdiction by requiring Plaintiffs to be assessed fees for a Ute Tribe Business License, Access Permits, and a forced “donation”, when Plaintiffs business activity occurs on lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation which is not Indian Country as defined in 18 USC § 1151, and such assessments are an unlawful and arbitrary tax in violation of the United States Constitution and the State of Utah Constitution.

## **V. SECOND CLAIM FOR RELIEF**

### **(REVIEW OF AUTHORITY OF UTERO OFFICIALS)**

98. Plaintiffs incorporate by reference the allegations set forth, *supra*.

99. Plaintiffs seek a declaration that UTERO officials regulation and/or penalization of business activities of non-Indians that occur on lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation which is not Indian Country as defined in 18 USC § 1151 has exceeded the lawful limits of the jurisdiction of the Ute Tribe, and consequently the authority of the UTERO officials.

100. Plaintiffs seek a declaration that UTERO officials regulation and/or penalization of business activities of non-Indians that occurs on lands allotted to individual Indians that have passed into fee status to non-Indians after 1905 within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.), has exceeded the lawful limits of the jurisdiction of the Ute Tribe, and consequently the authority of the UTERO officials.

101. Plaintiffs seek a declaration that UTERO officials regulation and/or penalization of business activities of non-Indians that occurs on lands State land within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.), has exceeded the lawful limits of the jurisdiction of the Ute Tribe, and consequently the authority of the UTERO officials.

102. Plaintiffs seek a declaration that UTERO officials regulation and/or penalization of business activities of non-Indians that occurs on lands Federal land not held in trust for the benefit of the Ute Tribe within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.), has exceeded the lawful limits of the jurisdiction of the Ute Tribe, and consequently the authority of the UTERO officials.

103. Plaintiffs seek a declaration that the UTERO officials harassment, threats, intimidation, extortion, and interference with Plaintiffs existing economic relationship with oil and gas companies has exceeded the lawful limits of the jurisdiction of the Ute Tribe, and consequently the authority of the UTERO officials.



**VI. THIRD CLAIM FOR RELIEF**

**(TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS)**

104. Plaintiffs incorporate by reference the allegations set forth, *supra*.

105. Defendants, UTERO officials, have intentionally interfered with the Plaintiffs existing economic relations with oil and gas companies including Newfield, Devon, Crescent, and Barry.

106. Defendants, UTERO officials, acted with an improper purpose and through improper means, with said action exceeding the lawful limits of the jurisdiction of the Ute Tribe and/or the authority of the UTERO officials.

107. Defendants, UTERO officials, took said action to promote their own business interests in violation of Federal law, State law, Plaintiffs Federal and State Constitutional rights, and the UTERO Ordinance.

108. Defendants, UTERO officials, *ultra vires* actions are the direct and proximate cause of injury to Plaintiffs including revenue losses of approximately \$80,000.00 per day, attorney's fees, and costs of suit.

**VII. FOURTH CLAIM FOR RELIEF**

**(EXTORTION)**

109. Plaintiffs incorporate by reference the allegations set forth, *supra*.

110. Commissioner Cesspooch, acting outside the scope of the authority the Tribe is capable of bestowing on him, threatened the property, business, and financial condition of Plaintiffs.

111. Said threats were made on lands including Non-Indian Fee Lands located in Roosevelt City, Utah.

112. Said threats were made to obtain property which was not demanded for the benefit of UTERO or the Ute Tribe.

113. Said threats were carried out by co-conspirator Director Wopsock, acting outside the scope of the authority the Tribe is capable of bestowing on her, by demanding all oil and gas companies cease business relations with Plaintiffs under threat of penalties and sanctions.

114. Defendants, UTERO officials, *ultra vires* actions are the direct and proximate cause of injury to Plaintiffs including revenue losses of approximately \$80,000.00 per day, attorney's fees, and costs of suit.

#### **VIII. PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray for relief against Defendants as follows:

1. Plaintiffs seek a declaration that the Ute Tribe has exceeded the lawful limits of its jurisdiction by regulating and/or penalizing private business activities of non-Indians that occur on lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation which is not Indian Country as defined in 18 USC § 1151.

2. Plaintiffs seek a declaration that the Ute Tribe has exceeded the lawful limits of its jurisdiction by regulating and/or penalizing private business activities of non-Indians that occurs on lands allotted to individual Indians that have passed into fee status to non-Indians after 1905 within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.).

3. Plaintiffs seek a declaration that the Ute Tribe has exceeded the lawful limits of its jurisdiction by regulating and/or penalizing private business activities of non-Indians that occurs on State land within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.).

4. Plaintiffs seek a declaration that the Ute Tribe has exceeded the lawful limits of its jurisdiction by regulating and/or penalizing private business activities of non-Indians that occurs on Federal land not held in trust for the benefit of the Ute Tribe within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.).

5. Plaintiffs seek a declaration that the Ute Tribe has exceeded the lawful limits of its jurisdiction by requiring Plaintiffs to be assessed fees for a Ute Tribe Business License, Access Permits, and a forced “donation”, when Plaintiffs business activity occurs on lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation which is not Indian Country as defined in 18 USC § 1151, and such assessments are

an unlawful and arbitrary tax in violation of the United States Constitution and the State of Utah Constitution.

6. Plaintiffs seek a declaration that UTERO officials regulation and/or penalization of business activities of non-Indians that occur on lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation which is not Indian Country as defined in 18 USC § 1151 has exceeded the lawful limits of the jurisdiction of the Ute Tribe, and consequently the authority of the UTERO officials.

7. Plaintiffs seek a declaration that UTERO officials regulation and/or penalization of business activities of non-Indians that occurs on lands allotted to individual Indians that have passed into fee status to non-Indians after 1905 within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.), has exceeded the lawful limits of the jurisdiction of the Ute Tribe, and consequently the authority of the UTERO officials.

8. Plaintiffs seek a declaration that UTERO officials regulation and/or penalization of business activities of non-Indians that occurs on lands State land within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.), has exceeded the lawful limits of the jurisdiction of the Ute Tribe, and consequently the authority of the UTERO officials.

9. Plaintiffs seek a declaration that UTERO officials regulation and/or penalization of business activities of non-Indians that occurs on lands Federal land not held in trust for the

benefit of the Ute Tribe within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.), has exceeded the lawful limits of the jurisdiction of the Ute Tribe, and consequently the authority of the UTERO officials.

10. Plaintiffs seek a declaration that the UTERO officials harassment, threats, intimidation, extortion, and interference with Plaintiffs existing economic relationship with oil and gas companies has exceeded the lawful limits of the jurisdiction of the Ute Tribe, and consequently the authority of the UTERO officials.

11. Plaintiffs seek an injunction restraining the Ute Tribe and UTERO officials from attempting to regulate Plaintiffs business activities in a manner that exceeds the jurisdiction of the Tribe, the authority of the UTERO officials, and violates Plaintiffs rights under Federal and State law.

12. Plaintiffs seek an injunction restraining the Ute Tribe and UTERO officials from wrongfully interfering in Plaintiffs' relationship with oil and gas companies.

13. Plaintiffs seek an injunction restraining the UTERO officials from harassing, threatening, intimidating, extorting, and retaliating against Plaintiffs.

14. Plaintiffs seek an injunction restraining the UTERO officials from harassing, threatening, intimidating, and retaliating against oil and gas companies that do business with Plaintiffs.

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15. For such other and further relief as the Court may deem proper.

DATED this 5<sup>th</sup> day of April, 2013.

JOHN D. HANCOCK LAW GROUP, PLLC

/s/ John D. Hancock  
John D. Hancock, Esq.  
*Attorney for Plaintiffs*

**DECLARATION OF RYAN URESK HARVEY**

I, RYAN URESK HARVEY hereby sworn, depose and state that I am over the age of eighteen (18) years old and am competent to testify to the facts contained herein based upon personal knowledge thereof.

1. I am the Plaintiff in the above named action.
2. I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief.
3. I declare under criminal penalty of Utah Code Section 78B-5-705 that the foregoing Declaration is true and correct.

DATED this 5<sup>th</sup> day of April, 2013.

/s/Ryan Uresk Harvey  
RYAN URESK HARVEY



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*Co-Counsel for Plaintiffs*

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IN THE EIGHTH DISTRICT COURT  
FOR DUCHESNE COUNTY-ROOSEVELT  
STATE OF UTAH

---

RYAN URESK HARVEY, ROCKS OFF INC.  
and WILD CAT RENTAL, INC.,

Plaintiffs,

vs.

UTE INDIAN TRIBE OF THE UINTAH and  
OURAY RESERVATION; DINO  
CESSPOOCH, in his official capacity as  
UTERO Commissioner and in his individual  
capacity; JACKIE LAROSE, in his official  
capacity as UTERO Commissioner and in his  
individual capacity; SHEILA WOPSOCK, in  
her official capacity as UTERO Director and in  
her individual capacity; NEWFIELD  
PRODUCTION COMPANY; NEWFIELD

**AMENDED VERIFIED COMPLAINT  
FOR DECLARATORY RELIEF,  
INJUNCTIVE RELIEF AND  
DAMAGES**

**TIER 3**

Case No.: 130000009  
Judge: Edwin T. Peterson



<p>ROCKY MOUNTAINS, INC.; NEWFIELD RMI, LLC; NEWFILED DRILLING SERVICES INC., a Utah corporation; L.C. WELDING &amp; CONSTRUCTION, INC., a Utah corporation, SCAMP EXCAVATION, INC., a Utah corporation; HUFFMAN ENTERPRISES, INC., a Utah corporation; LAROSE CONSTRUCTION COMPANY, INC., a Utah corporation; D.RAY C. ENTERPRISES, L.L.C., a Utah limited liability company; and DOES 1 through 25,</p> <p style="text-align: center;">Defendants.</p>	
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**COME NOW** the Plaintiffs, Ryan Uresk Harvey, (“Ryan”), Rocks Off, Inc. and Wild Cat Rentals, Inc., (the businesses collectively as “Rocks Off”) by and through their counsel of record, John D. Hancock of and for the law firm of John D. Hancock Law Group, PLLC, and hereby submits their Amended Verified Complaint for Declaratory, Injunctive Relief and Damages as follows:

### **I. THE PARTIES AND VENUE**

1. Plaintiff, Ryan Uresk Harvey (“Ryan”) is, and at all times mentioned herein, an individual domiciled in Duchesne County, State of Utah.
2. Plaintiff, Rocks Off, Inc. (“Rocks Off”) is, and at all times mentioned herein, a Utah corporation, with its principal place of business located at 10643 South 4900 East, Myton, Utah 84052.

3. Plaintiff, Wild Cat Rentals, Inc. ("Wild Cat") is, and at all times mentioned herein, a Utah corporation with its principal place of business located at 10643 South 4900 East, Myton, Utah 84052.

4. Defendant, Ute Indian Tribe of the Uintah and Ouray Reservation ("Ute Tribe"), is a federally recognized tribe with reservation lands located in Uintah County, Utah, and Duchesne County, Utah.

5. Defendant, Dino Cesspooch ("Commissioner Cesspooch"), is an appointed Ute Tribal Employment Rights Office ("UTERO") Commissioner of the Ute Tribe, and is sued in his individual as well as his official capacity.

6. Defendant, Jackie LaRose ("Commissioner LaRose"), is an appointed UTERO Commissioner of the Ute Tribe, and is sued in his individual as well as his official capacity.

7. Defendant, Sheila Wopsock ("Director Wopsock"), is the appointed Director of the UTERO Commission, and is sued in her individual as well as her official capacity.

8. Defendants, Newfield Production Company and Newfield Rocky Mountain, Inc. are Delaware corporations under common ownership and control, and energy companies engaged in the exploration, development and production of crude oil, natural gas, and natural gas liquids with production regions, employees, operations, and do business, in Duchesne and Uintah Counties, Utah.

9. Defendant Newfield RMI, LLC is a Delaware limited liability company under common ownership and control with Newfield Production Company and Newfield Rocky

Mountain, Inc., engaged in the exploration, development and production of crude oil, natural gas, and natural gas liquids with production regions, employees, operations, and does business, in Duchesne and Uintah Counties, Utah.

10. Defendant Newfield Drilling Services Inc. is a Utah corporation under common ownership and control with Newfield Production Company, Newfield Rocky Mountain, Inc., and Newfield RMI, LLC engaged in the exploration, development and production of crude oil, natural gas, and natural gas liquids with production regions, employees, operations, and does business, in Duchesne and Uintah Counties, Utah.

11. Defendants Newfield RMI, LLC, Newfield Production Company Newfield Rocky Mountain, Inc. and Newfield Drilling Services Inc. are referred to collectively herein as "Newfield" and are subject to the jurisdiction of the courts of Utah.

12. Defendant L.C. Welding & Construction, Inc. ("L.C. Welding") is a Utah corporation that does business in Utah and is subject to the jurisdiction of the courts of Utah.

13. Defendant Scamp Excavation, Inc. ("Scamp") is a Utah corporation that does business in Utah and is subject to the jurisdiction of the courts of Utah.

14. Defendant Huffman Enterprises, Inc. ("Huffman") is a Utah corporation that does business in Utah and is subject to the jurisdiction of the courts of Utah.

15. Defendant LaRose Construction Company, Inc. ("LaRose Construction") is a Utah corporation that does business in Utah and is subject to the jurisdiction of the courts of Utah.

16. Defendant D.Ray C. Enterprises, L.L.C. ("D.Ray Enterprises") is a Utah limited liability company that does business in Utah and is subject to the jurisdiction of the courts of Utah.

17. The true names and capacities of the Does 1 through 25 are unknown to Plaintiffs who, therefore, sue such Defendants by such fictitious names. Plaintiffs will amend this Complaint to show their true names and capacities when ascertained. Plaintiffs are informed and believe and thereon allege that each of the Defendants designated as DOE is responsible in some manner for the events and happenings herein referred to, and thereby proximately caused and continue to cause injuries to Plaintiffs as alleged herein.

18. Venue is proper in the Eighth Judicial District Court, Duchesne County, Utah, Roosevelt Division, because the acts and occurrences complained of herein occurred in Duchesne County.

## **II. GENERAL ALLEGATIONS**

19. Duchesne County, Utah, and Uintah County, Utah, are located in the Uintah Basin.

20. The major economic force in the Uintah Basin is the oil and gas industry.

21. There are approximately 34,524 residents in Uintah County.

22. There are approximately 19,244 residents in Duchesne County.

23. The Uintah and Ouray Reservation of the Ute Indian Tribe is located within the Uintah Basin.

24. There are approximately 3,000 enrolled members of the Ute Tribe.
25. Ryan and his wife, as beneficiaries of their respective trusts, are the sole owners of Rocks Off and Wild Cat.
26. Rocks Off owns or leases gravel pits and rock crushing operations (the "Pits") in Duchesne County, Utah and Uintah County, Utah.
27. The Pits are located on private fee land.
28. The Pits are located on lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation.
29. The lands the Pits are located on are not Indian Country as defined under 18 USC § 1151 and *Hagen v. Utah*, 510 U.S. 399, 114 S. Ct. 958 (1994).
30. The majority of Rocks Off revenue is generated by providing dirt, sand and gravel (the "Products") to oil and gas companies including Newfield.
31. Rocks Off customers transport the Products to various locations throughout Duchesne County and Uintah County.
32. The Rocks Off business does not require Rocks Off to access or pass through Ute Tribal land, with its operations confined to fee land outside of Indian Country and off reservation as defined under 18 USC § 1151 and *Hagen v. Utah*, 510 U.S. 399, 114 S. Ct. 958 (1994).
33. Wild Cat leases heavy equipment.

34. Wild Cat conducts its business on private fee land that is not located within Indian Country or the reservation as defined in 18 USC § 1151 and *Hagen v. Utah*, 510 U.S. 399, 114 S. Ct. 958 (1994).

35. The individuals/entities that lease Wild Cat equipment may or may not utilize this equipment on Ute Tribal land.

36. To the extent the Wild Cat lessees utilize the Wild Cat equipment on Ute Tribal land, the lessees would be responsible for obtaining appropriate permissions and certifications from the Ute Tribe; e.g., Access Permits.

37. Since in or about September 2012, Commissioner Cesspooch has harassed, threatened, bullied, and intimidated Plaintiffs by threatening to utilize his position as a UTERO Commissioner to “shut down” Plaintiffs’ businesses.

38. Commissioner Cesspooch has subjected Plaintiffs to duress because oil and gas companies, including Newfield, have cooperated with and assisted Commissioner Cesspooch by refusing work and to do business with companies similar to Plaintiffs’ effectively shutting down businesses similar to Plaintiffs’.

39. Ryan attempted to explain to Commissioner Cesspooch that Rocks Off operations are conducted on private fee land outside the jurisdiction of the Ute Tribe.

40. Ryan also informed Commissioner Cesspooch that Rocks Off does not have to access or travel through Ute Tribal land as part of its operations.

41. Ryan further informed Commissioner Cesspooch that Rocks Off's Products are transported by the buyer to the intended locations so that Rocks Off never passes through Tribal Land.

42. In spite of this information, Commissioner Cesspooch continued to threaten to "shut down" Plaintiffs' businesses and to confiscate Plaintiffs' equipment if Rocks Off was not UTERO certified.

43. Alarmed by these threats, Ryan and Allen Smith met with Commissioner Cesspooch at the UTERO office in or about November 2012.

44. Commissioner Cesspooch again threatened that he was going to shut down Plaintiffs' businesses and impound all of Rocks Off's front end loaders if Ryan did not obtain UTERO certification.

45. The front end loaders Commissioner Cesspooch threatened to impound are all located on private fee land that is not located within Indian Country or reservation as defined in 18 USC § 1151 and *Hagen v. Utah*, 510 U.S. 399, 114 S. Ct. 958 (1994); the Pits.

46. Allen Smith was a witness to these comments at the meeting with Commissioner Cesspooch.

47. Ryan was under duress based upon Commissioner Cesspooch's threats and decided to obtain UTERO certification in an effort to avoid being "shut down" and to save his businesses.

48. At Ryan's direction, the Rocks Off secretary, Mindy Allred, went to the UTERO office in or about November 2012.

49. Rocks Off was charged for a Ute Business License, Access Permits, and forced to pay a \$2,500.00 "donation" to the UTERO Commission so that Plaintiffs' application would be processed.

50. Shortly after Rocks Off obtained its UTERO Certification, Ute Business License, and Access Permits, Ryan was accosted by Commissioners Cesspooch and LaRose at the China Star restaurant in Roosevelt, Utah, that is not located within Indian Country or reservation as defined in 18 USC § 1151 and *Hagen v. Utah*, 510 U.S. 399, 114 S. Ct. 958 (1994).

51. Commissioner Cesspooch again threatened Ryan that he had better get "Tribal permits" if he did not want to be "shut down".

52. Ryan told Commissioner Cesspooch that Rocks Off had obtained its Tribal permits and that he was the UTERO Commissioner that had signed the permits.

53. After being accosted by Commissioner Cesspooch at the Roosevelt restaurant, Commissioner Cesspooch called Ryan and told him that the Certification and Access Permits were no good and that his signature had been forged.

54. Commissioner Cesspooch demanded that Ryan immediately meet him at the UTERO office.

55. Ryan refused to meet Commissioner Cesspooch at the UTERO office.



56. That evening Ryan agreed to meet with Commissioner Cesspooch and Commissioner LaRose at the Frontier Grill in Roosevelt, Utah, that is not located within Indian Country or reservation as defined in 18 USC § 1151 and *Hagen v. Utah*, 510 U.S. 399, 114 S. Ct. 958 (1994).

57. Commissioner Cesspooch informed Ryan, at that point, that the Ute Tribe permits obtained by the Rocks Off secretary were good, despite his earlier representations that his signature was forged and he had new documentation with him that he refused to give Ryan at that time.

58. In or about February of 2013, Ryan was traveling eastbound on Highway 40 in Roosevelt, Utah.

59. Commissioner Cesspooch pulled his vehicle next to Ryan's and aggressively pointed for him to pull over.

60. Commissioner Cesspooch then pulled in front of Ryan's vehicle and dangerously braked his vehicle.

61. Commissioner Cesspooch pulled into the IFA parking lot located in Roosevelt, Utah, that is not located within Indian Country or reservation as defined in 18 USC § 1151 and *Hagen v. Utah*, 510 U.S. 399, 114 S. Ct. 958 (1994) and motioned for Ryan to follow.

62. Ryan followed Commissioner Cesspooch into the IFA parking lot.

63. Commissioner Cesspooch attempted to extort money from Ryan in the IFA parking lot saying that he "sure needed a good riding horse."

64. Other than extorting Ryan, there was no other purpose for Commissioner Cesspooch to stop him.

65. Ryan refused to give Commissioner Cesspooch any money at that time.

66. A couple of weeks after refusing to pay Commissioner Cesspooch, Ryan received a letter from the UTERO Commission signed by Director Wopsock dated March 15, 2013.

67. The UTERO Commission accused Ryan of engaging in “fraudulent activities, including the submission offalse [of false] and inaccurate official tribal, state and federal documents.”

68. Ryan denies these allegations.

69. By correspondence dated March 20, 2013, the UTERO Director threatened that any oil and gas companies that utilized Plaintiffs’ Products or services would be assessed “. . . penalties and/or sanctions . . . to the fullest extent of the law.”

70. Since the March 20, 2013, threats by Director Wopsock, the oil and gas companies, including Newfield, have refused to allow any business who leases Plaintiffs’ equipment or utilizes Plaintiffs’ Products to provide services.

71. By email dated March 22, 2013, Newfield informed Ryan that it would not be utilizing Plaintiffs’ products or services per the direction of the “UTERO committee”.

72. Newfield’s and other oil and gas companies’ cooperation with the unlawful and *ultra vires* actions of tribal officials empowers said officials and is the direct and proximate cause of damages to Plaintiffs.

73. Since March 2013, Plaintiffs' have lost approximately \$80,000.00 per day in revenues as the result of Newfield and other oil and gas companies cooperating in the unlawful UTERO blacklist and boycott of Plaintiffs.

74. Ryan has been contacted by oil and gas companies, including Newfield, and told that they cannot do business with Plaintiffs or work with anyone that does business with Plaintiffs based on their cooperation with and support of the UTERO officials.

75. Plaintiffs have been substantially and irreparably harmed based upon the UTERO Directors and Commissioners wrongful interference with Plaintiffs' businesses, and continue to suffer substantial and irreparable harm.

76. Ryan has had two or three telephonic discussions with Commissioner Cesspooch since March 20, 2013.

77. Commissioner Cesspooch was unable to provide Ryan with a single reason why the UTERO officials terminated Plaintiffs' businesses, and had Plaintiffs blacklisted and boycotted by the local oil and gas industry.

78. The UTERO Director has called Ryan and demanded the serial numbers to all of the equipment leased through Wild Cat Rentals.

79. Plaintiffs lease some equipment to Kaufusi Excavating, Inc., which is a Utah corporation wholly owned by enrolled Ute Tribe members.

80. Plaintiffs also lease equipment to Shane Reary ("Shane"), a Non-Indian.

81. Shane contacted Ryan on or about March 28, 2013, and told him that he had been threatened by Commissioner Cesspooch.

82. Commissioner Cesspooch threatened Shane that he would be “shut down” if he used Ryan’s equipment.

83. Commissioner Cesspooch threatened that if Shane did not come in and meet with him at the UTERO office immediately, he would be forcefully escorted to the office by Ute Tribe officials.

84. Shane met with Commissioner Cesspooch and provided him with identification numbers to all of the equipment he leases from Plaintiffs.

85. Ryan was contacted by Brad Allred of Nelson Construction, Inc., on March 28, 2013, and informed that the UTERO Director had told them they could not utilize Plaintiffs’ rock crusher on its pit that is located on private ground that is not located within Indian Country or reservation as defined in 18 USC § 1151 and *Hagen v. Utah*, 510 U.S. 399, 114 S. Ct. 958 (1994), or Nelson Construction, Inc. would be shut down like Rocks Off had been shut down.

86. Ryan is aware of incidents where UTERO officials have engaged in a pattern and practice of extorting money from area businesses in a similar manner by threatening to “shut down” their operations if the businesses do not pay the UTERO officials.

87. Based on information and belief, Commissioner Cesspooch has demanded 10% of area businesses gross revenues in return for promises that he will keep them working and UTERO compliant.

88. Ryan is aware that UTERO officials dictate to oil and gas companies which contractors will be awarded bids and which contractors are not to be used.

89. Based on information and belief, Commissioner Cesspooch is a convicted felon.

90. Plaintiffs' counsel contacted Director Wopsock to attempt an informal resolution on April 2, 2013.

91. Plaintiffs' counsel was informed that Ryan would need to meet with UTERO officials alone and that he would not be allowed to be accompanied by counsel.

92. Commissioner LaRose, at all relevant times, owned an interest in an oil & gas service company, LaRose Construction, Inc., a Utah corporation, and a Certified Firm with Indian Preference under UTERO.

93. Based on information and belief, Commissioner LaRose received bribes and work from Huffman Enterprises, Inc. ("Huffman"), a competitor of Plaintiffs, in exchange for Commissioner LaRose abusing his position as UTERO Commissioner and wrongfully diverting business from Plaintiffs to Huffman.

94. Based on information and belief, Commissioner LaRose, L.C. Welding and Scamp conspired to receive an economic interest in a competing gravel pit ("Competing Pit") located on private fee land which commenced operations immediately after Plaintiffs operations were "shut down" by co-conspirators: Director Wopsock, Commissioner Cesspooch, and Commissioner LaRose.

95. Based on information and belief, Commissioner LaRose, Commissioner Cesspooch, and Director Wopsock conspired to abuse their UTERO positions to eliminate Plaintiffs as competitors of the Competing Pit.

96. Based on information and belief, Commissioner LaRose, Commissioner Cesspooch, and Director Wopsock, conspired to abuse their UTERO positions to destroy Plaintiffs' businesses for refusing to be extorted by Commissioner Cesspooch.

97. Commissioner Cesspooch, at all relevant times, owned an interest in an oil & gas service company, D Ray Enterprises, L.L.C., a Utah limited liability company, and a Certified Firm with Indian Preference under UTERO.

### III. JURISDICTION

98. This Court has jurisdiction as a court of general jurisdiction and has jurisdiction over the Ute Tribe based upon the waiver of sovereign immunity pursuant to Section 13.3 of the UTERO Ordinance, 10-002. *See* Ordinance 10-002 attached hereto as Exhibit "1".

99. This Court has jurisdiction over the tribal officials based on the tribal officials violation of state law, the acts complained of by the tribal officials are *ultra vires*, and the unlawful and unauthorized conduct has caused and continues to cause substantial and irreparable harm to non-Indian Plaintiffs' business activities on private fee land that is not Indian Country or reservation as defined under 18 USC § 1151 and *Hagen v. Utah*, 510 U.S. 399, 114 S. Ct. 958 (1994). *See Puyallup Tribe v. Department of Game of the State of Washington*, 433 U.S. 165

(1977); *Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Community*, 991 F.2d 458 (8th Cir. 1993), and is located within the State of Utah.

100. It is not necessary for Plaintiffs to exhaust the remedies that might otherwise be available to them in Ute Tribal Court because the actions of the Defendants patently violate express jurisdictional prohibitions against the Ute Tribe's assertion of jurisdiction over Plaintiffs and the actions complained of occurred outside of Indian Country and off reservation as defined under 18 USC § 1151 and *Hagen v. Utah*, 510 U.S. 399, 114 S. Ct. 958 (1994) and within the State of Utah. See *National Farms Union Ins. Cos. v. Crow Indian Tribe*, 471 U.S. 845 (1985).

101. The declaratory relief sought by Plaintiffs is authorized pursuant to Utah Code Title 78B, Chapter 6, Part 4.

102. Plaintiffs' rights guaranteed to them under Utah statute, common law and the State of Utah Constitution have been violated and continue to be violated.

#### IV. FIRST CLAIM FOR RELIEF

##### **(REVIEW OF UTE TRIBE JURISDICTION OVER NON-INDIAN PLAINTIFFS ACTIVITIES OUTSIDE OF INDIAN COUNTRY AND OFF RESERVATION AS DEFINED UNDER 18 USC § 1151 AND HAGEN V. UTAH, 510 U.S. 399, 114 S. Ct. 958 (1994).)**

103. Plaintiffs incorporate by reference the allegations set forth, *supra*.

104. An existing and actual controversy exists within this Court's jurisdiction concerning the Ute Tribe's exercise of jurisdiction over the business activities of non-Indian Plaintiffs in all land categories as defined in Paragraphs 104 through 108.

105. Plaintiffs seek a declaration that the assertion of Tribal jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation which is not Indian Country or reservation as defined in 18 USC § 1151.

106. Plaintiffs seek a declaration that the assertion of Tribal jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on lands allotted to individual Indians that have passed into fee status to non-Indians after 1905 within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.).

107. Plaintiffs seek a declaration that the assertion of Tribal jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on State land within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.).



108. Plaintiffs seek a declaration that the assertion of Tribal jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on Federal land not held in trust for the benefit of the Ute Tribe within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.).

109. Plaintiffs seek a declaration that the assertion of Tribal jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, by requiring Plaintiffs to be assessed fees for a Ute Tribe Business License, Access Permits, and a forced "donation", when Plaintiffs' business activity occurs on lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation, which is not Indian Country or reservation as defined in 18 USC § 1151.

## **V. SECOND CLAIM FOR RELIEF**

### **(REVIEW OF AUTHORITY OF UTERO OFFICIALS)**

110. Plaintiffs incorporate by reference the allegations set forth, *supra*.

111. Plaintiffs seek a declaration that the assertion of UTERO jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on

lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation, which is not Indian Country or reservation as defined in 18 USC § 1151, and are thus beyond the jurisdiction of the Ute Tribe and consequently the authority of the UTERO officials.

112. Plaintiffs seek a declaration that the assertion of UTERO jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on lands allotted to individual Indians that have passed into fee status to non-Indians after 1905 within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.), and are thus beyond the jurisdiction of the Ute Tribe and consequently the authority of the UTERO officials.

113. Plaintiffs seek a declaration that the assertion of UTERO jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on State land within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.), and are thus beyond the jurisdiction of the Ute Tribe and consequently the authority of the UTERO officials.

114. Plaintiffs seek a declaration that the assertion of UTERO jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on lands that are Federal land not held in trust for the benefit of the Ute Tribe within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.), and are thus beyond the jurisdiction of the Ute Tribe and consequently the authority of the UTERO officials.

115. Plaintiffs seek a declaration that the assertion of UTERO jurisdiction as a defense to Plaintiffs' claims is unavailing, as the UTERO officials' harassment, threats, intimidation, extortion, and interference with Plaintiffs' existing economic relationship with oil and gas companies has exceeded the lawful limits of the jurisdiction of the Ute Tribe, and consequently the authority of the UTERO officials.

## **VI. THIRD CLAIM FOR RELIEF**

### **(TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS)**

116. Plaintiffs incorporate by reference the allegations set forth, *supra*.

117. Defendants have intentionally interfered with the Plaintiffs' existing and potential economic relations

118. Defendants acted with an improper purpose and/or through improper means, with said action exceeding the lawful limits of the jurisdiction of the Ute Tribe and/or the authority of the UTERO officials.

119. Defendants took said action to promote their own business interests in violation of Utah statute and common law, the Constitution of Utah and the UTERO Ordinance.

120. Defendants actions are the direct and proximate cause of injury to Plaintiffs including revenue losses of approximately \$80,000.00 per day, attorney fees and costs of suit.

121. Defendants did the things herein alleged maliciously and to oppress Plaintiffs. Plaintiffs are therefore entitled to exemplary or punitive damages in an amount to be proven at trial.

#### **VII. FOURTH CLAIM FOR RELIEF**

##### **(EXTORTION AGAINST CESSPOOCH AND WOPSOCK)**

122. Plaintiffs incorporate by reference the allegations set forth, *supra*.

123. Commissioner Cesspooch, acting outside the scope of the authority the Tribe is capable of bestowing on him, threatened the property, business and financial condition of Plaintiffs.

124. Said threats were made on lands including Non-Indian Fee Lands located in Roosevelt City, Utah.

125. Said threats were made to obtain property which was not demanded for the benefit of UTERO or the Ute Tribe.

126. Said threats were carried out by co-conspirators Director Wopsock and Commissioner LaRose, acting outside the scope of the authority the Tribe is capable of bestowing, by demanding all oil and gas companies cease business relations with Plaintiffs.

127. Co-conspirator, Newfield, acted in furtherance of the conspiracy by ceasing business relations with Plaintiffs.

128. Defendants actions are the direct and proximate cause of injury to Plaintiffs including revenue losses of approximately \$80,000.00 per day, attorney fees and costs of suit.

129. Defendants did the things herein alleged maliciously, with a disregard for the rights of Plaintiffs, and to oppress Plaintiffs. Plaintiffs are therefore entitled to exemplary or punitive damages in an amount to be proven at trial.

#### **VIII. FIFTH CLAIM FOR RELIEF**

##### **(UNLAWFUL RESTRAINT OF TRADE AGAINST CONSPIRING DEFENDANTS)**

130. Plaintiffs incorporate by reference the allegations set forth, *supra*.

131. Defendants L.C. Welding, Scamp, Huffman, LaRose Construction, D.Ray C. Enterprises, Newfield, in addition to Commissioner Cesspooch, Commissioner LaRose, and Director Wopsock, acting outside the scope of the authority the Tribe is capable of bestowing upon them, are collectively referred to herein as the "Conspiring Defendants."

132. At the times mentioned in this complaint, Plaintiffs were engaged in the business of providing sand and gravel, and leasing heavy equipment to customers including, but not limited to, oil and gas companies.

133. Plaintiffs developed a large and profitable business with revenues in excess of \$80,000.00 per day. But for the unlawful acts and facts alleged in this complaint, Plaintiffs would have continued to enjoy a lucrative and profitable business and increased profits and prospered accordingly.

134. The Conspiring Defendants together engaged in acts constituting a contract, combination and/or a conspiracy intended to place unlawful restraints on trade and commerce in violation of Utah Code Ann. § 76-10-911 *et seq.* and Article XII, § 20, of the Utah Constitution.

135. Specifically, Director Wopsock, Commissioner Cesspooch and Commissioner LaRose, abusing their position as officers of UTERO, initiated a boycott of Plaintiffs, and refused to allow any business to lease Plaintiffs' equipment or utilize Plaintiffs' Products to provide services. In particular, oil and gas companies ceased doing business with Plaintiffs or work with anyone that does business with Plaintiffs. Newfield cooperated in this illegal and unlawful conduct.

136. Commissioner Cesspooch specifically threatened non-Indian leasing customers of Plaintiffs that they would be shut down by cooperating oil and gas companies such as Newfield if they were to use Plaintiffs' equipment or purchase Products from Plaintiffs. In addition, Director Wopsock, Commissioner Cesspooch and Commissioner Larose unlawfully and in concert with oil and gas companies determined which contractors would be awarded bids and which contractors were not to be used.

137. Based on information and belief, Commissioner LaRose received bribes and work from Huffman Enterprises, Inc. ("Huffman"), a competitor of Plaintiffs, in exchange for Commissioner LaRose's abusing his position as UTERO Commissioner and diverting business from Plaintiffs to Huffman.

138. Based on information and belief, Commissioner LaRose received an economic interest in a competing gravel pit ("LaRose Gravel Pit") located on private fee land which commenced operations immediately after Plaintiffs operations were "shut down" by Director Wopsock.

139. Based on information and belief, Commissioner LaRose, Commissioner Cesspooch and Director Wopsock conspired to abuse their UTERO positions to eliminate Plaintiffs as competitors of the LaRose Gravel Pit.

140. Commissioner LaRose owned an interest in LaRose Construction which participated in the conspiracy and derived substantial economic benefit from the Conspiring Defendants' unlawful restraint of trade and commerce.

141. Based on information and belief, Commissioner LaRose, Commissioner Cesspooch and Director Wopsock conspired to abuse their UTERO positions to destroy Plaintiffs' businesses for refusing to be extorted by Commissioner Cesspooch.

142. Commissioner Cesspooch owned an interest D.Ray Enterprises which participated in the conspiracy and derived substantial economic benefit from the Conspiring Defendants' unlawful restraint of trade and commerce.

143. The Conspiring Defendants, which participated in the conspiracy, derived a substantial economic benefit from the activities which resulted in an unlawful restraint of trade and commerce.

144. The conspiracy of the Conspiring Defendants has been in continuous existence and has been participated in for varying periods and in varying degrees by each of the Conspiring Defendants, and also by a large number of individuals not named as defendants.

145. The acts on the part of the Conspiring Defendants were in restraint of trade, and by reason thereof, Plaintiffs were restricted in their trade and competition with the other participants in the industry, all of which was injurious to Plaintiffs and excluded Plaintiffs from competition in the market.

146. By reason of the Conspiring Defendants' violation of Utah Code Ann. § 76-10-911 et seq., Plaintiffs are, pursuant to said statute, entitled to threefold the damages sustained with interest thereon, and a reasonable attorneys' fee in connection herewith.

147. The Conspiring Defendants did the things herein alleged maliciously, in disregard of the lawful rights of Plaintiffs, and to oppress Plaintiffs. Plaintiffs are therefore entitled to exemplary or punitive damages in an amount to be proven at trial.

#### **IX. SIXTH CLAIM FOR RELIEF**

##### **(BLACKLISTING)**

148. Plaintiffs incorporate by reference the allegations set forth, *supra*.



149. Conspiring Defendants, by their actions hereinbefore set forth, together engaged in acts constituting blacklisting in violation of Article XII, § 19, and Article XVI, § 4 of the Utah Constitution.

150. Conspiring Defendants did the things herein alleged maliciously, in disregard of Plaintiffs' lawful rights, and to oppress Plaintiffs. Plaintiffs are therefore entitled to exemplary or punitive damages in an amount to be proven at trial.

#### **X. SEVENTH CLAIM FOR RELIEF**

##### **(CIVIL CONSPIRACY AGAINST CONSPIRING DEFENDANTS)**

151. Plaintiffs incorporate by reference the allegations set forth, *supra*.

152. The tort of civil conspiracy consists of an agreement between two or more persons to do an unlawful act, or to do a lawful act in an unlawful way, that results in damage to the claimant. *E.g., Alta Indus. v. Hurst*, 846 P.2d 1282 (Utah 1993); *Peterson v. Delta Air Lines, Inc.*, 42 P.3d 1253 (Ut. Ct. App. 2002).

153. Conspiring Defendants have intentionally and maliciously engaged in a conspiracy to perform unlawful acts, or to do a lawful act in an unlawful manner, for the purpose of causing damage to Plaintiffs and thereby obtain unlawful financial gain.

154. Conspiring Defendants' conspiracy has and is causing significant financial damage to Plaintiffs including revenue losses of approximately \$80,000.00 per day, attorney fees, and costs of suit.

155. Conspiring Defendants participated in the conspiracy and did the things herein alleged maliciously, in disregard of Plaintiffs' lawful rights, and to oppress Plaintiffs. Plaintiffs are therefore entitled to exemplary or punitive damages in an amount to be proven at trial.

#### **XI. PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray for relief against Defendants as follows:

1. Plaintiffs seek a declaration that the assertion of Tribal jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation which is not Indian Country or reservation as defined in 18 USC § 1151.

2. Plaintiffs seek a declaration that the assertion of Tribal jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on lands allotted to individual Indians that have passed into fee status to non-Indians after 1905 within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.).

3. Plaintiffs seek a declaration that the assertion of Tribal jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize

private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on State land within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.).

4. Plaintiffs seek a declaration that the assertion of Tribal jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on Federal land not held in trust for the benefit of the Ute Tribe within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.).

5. Plaintiffs seek a declaration that the assertion of Tribal jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, by requiring Plaintiffs to be assessed fees for a Ute Tribe Business License, Access Permits, and a forced "donation", when Plaintiffs' business activity occurs on lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation, which is not Indian Country or reservation as defined in 18 USC § 1151.

6. Plaintiffs seek a declaration that the assertion of UTERO jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of

Utah and business entities which are authorized to do business by the State of Utah, that occur on lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation, which is not Indian Country or reservation as defined in 18 USC § 1151, and are thus beyond the jurisdiction of the Ute Tribe and consequently the authority of the UTERO officials.

7. Plaintiffs seek a declaration that the assertion of UTERO jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on lands allotted to individual Indians that have passed into fee status to non-Indians after 1905 within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.), and are thus beyond the jurisdiction of the Ute Tribe and consequently the authority of the UTERO officials.

8. Plaintiffs seek a declaration that the assertion of UTERO jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on State land within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.), and are thus beyond the jurisdiction of the Ute Tribe and consequently the authority of the UTERO officials.

9. Plaintiffs seek a declaration that the assertion of UTERO jurisdiction as a defense to Plaintiffs' claims is unavailing, as the Ute Tribe lacks jurisdiction to regulate and/or penalize private business activities of non-Indians, including individuals who are citizens of the State of Utah and business entities which are authorized to do business by the State of Utah, that occur on lands that are Federal land not held in trust for the benefit of the Ute Tribe within the boundaries of the Uintah Valley Reservation as defined by *Ute Indian Tribe v. State of Utah*, 114 F. 3d 1513 (10th Cir.), and are thus beyond the jurisdiction of the Ute Tribe and consequently the authority of the UTERO officials.

10. Plaintiffs seek a declaration that the assertion of UTERO jurisdiction as a defense to Plaintiffs' claims is unavailing, as the UTERO officials' harassment, threats, intimidation, extortion, and interference with Plaintiffs' existing economic relationship with oil and gas companies has exceeded the lawful limits of the jurisdiction of the Ute Tribe, and consequently the authority of the UTERO officials.

11. Plaintiffs seek an injunction restraining the Ute Tribe and UTERO officials from attempting to regulate Plaintiffs business activities in a manner that exceeds the jurisdiction of the Tribe, the authority of the UTERO officials, and violates Plaintiffs' rights under State law.

12. Plaintiffs seek an injunction restraining the Ute Tribe and UTERO officials from wrongfully interfering in Plaintiffs' relationship with oil and gas companies.

13. Plaintiffs seek an injunction restraining the UTERO officials from harassing, threatening, intimidating, extorting, and retaliating against Plaintiffs.

14. Plaintiffs seek an injunction restraining the UTERO officials from harassing, threatening, intimidating, and retaliating against oil and gas companies that do business with Plaintiffs.

15. Plaintiffs seek general and specific damages in excess of \$300,000.00 in an amount to be proven at trial.

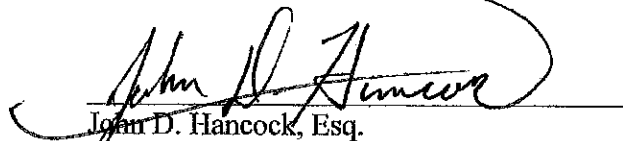
16. Plaintiffs seek treble damages, pursuant to Utah Code Ann. § 76-10-911 et seq., in an amount to be proven at trial.

17. Plaintiffs seek punitive damages in an amount to be proven at trial.

18. For such other and further relief as the Court may deem proper.

DATED this 21 day of August, 2013.

JOHN D. HANCOCK LAW GROUP, PLLC

  
John D. Hancock, Esq.  
*Attorney for Plaintiffs*

**DECLARATION OF RYAN URESK HARVEY**

I, RYAN URESK HARVEY hereby sworn, depose and state that I am over the age of eighteen (18) years old and am competent to testify to the facts contained herein based upon personal knowledge thereof, except for those items stated upon information and belief and as to those matters, I believe them to be true.

1. I am the Plaintiff in the above named action.
2. I have read the foregoing Amended Verified Complaint for Declaratory Relief, Injunctive Relief and Damages.
3. I declare under criminal penalty of Utah Code Section 78B-5-705 that the foregoing is true and correct.

DATED this 29 day of August, 2013.

  
RYAN URESK HARVEY