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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UTE INDIAN TRIBE OF THE UINTAH & OURAY RESERVATION, a federally recognized Indian Tribe; UTE INDIAN TRIBE OF THE UINTAH & OURAY RESERVATION, a federally chartered corporation; the UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE, and UTE ENERGY HOLDINGS LLC, a Delaware LLC; Plaintiffs, v. HONORABLE BARRY G. LAWRENCE, District Judge, Utah Third Judicial District Court, in his Individual and Official Capacities, and LYNN D. BECKER, Defendants.	**COMPLAINT** Civil No. _____

Plaintiffs, for their complaint, allege upon information and belief, except for those allegations that pertain to Plaintiffs, which are alleged upon personal knowledge, as follows:

INTRODUCTION

This is an action for injunctive and declaratory relief by which Plaintiffs seek (1) an order prohibiting Defendant Judge Barry G. Lawrence from exercising jurisdiction over the case captioned *Lynn Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation, et al.*, Case No. 140908394, Third District Court (hereinafter "the *Becker* lawsuit"), and (2) a declaratory judgment that (*i*) the Utah state court lacks subject matter jurisdiction over the *Becker* lawsuit; (*ii*) that the contract between the Plaintiff Tribe and Defendant Becker is a nullity under the Tribe's Constitution and under federal common law and statutory restraints on the alienation of Indian property, including, without limitation, the Non-Intercourse Act, 25 U.S.C. §§ 177, 202; the Indian Mineral Development Act, 25 U.S.C. § 2102(a); the Indian Reorganization Act, 25 U.S.C. § 464; and 25 U.S.C. § 85; and (*iii*) that Plaintiffs have tribal sovereign immunity against the claims alleged by Defendant Becker.

JURISDICTION AND VENUE

1. This is a civil action brought by an Indian tribe with a body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, and treaties of the United States. The Court has jurisdiction over the action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1362 (action brought by an Indian tribe), 28 U.S.C. § 1343 (protection of civil rights), and 28 U.S.C. § 1367 (supplemental jurisdiction).

2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all of the actions from which the claims arise occurred or are occurring within the District of Utah.

PARTIES

3. Plaintiff Ute Indian Tribe ("Tribe" or "Ute Tribe") is a federally recognized Indian Tribe, organized with a Constitution approved by the Secretary of the Interior pursuant to Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476. In addition to being a federally recognized Indian tribe, in 1938 the Tribe sought and obtained a charter to operate as a federal corporation under the Section 17 of the Indian Reorganization Act, 25 U.S.C. § 477—a so-called "Section 17 Corporation"—however, the Tribe's Section 17 federal corporation has never been monetized or activated.

4. Plaintiff Uintah and Ouray Tribal Business Committee ("Business Committee") is the Tribe's elected six-member governing body.

5. Plaintiff Ute Energy Holdings LLC was established as a wholly owned tribal commercial entity under Delaware state law. The Tribe owns one hundred percent (100%) of the interest in Ute Energy Holdings LLS and the Tribe is the sole Member of the LLC.

6. Defendant Judge Barry G. Lawrence is a Utah state district court judge, sitting in the Third Judicial District Court, Salt Lake County, who is currently presiding over the civil lawsuit captioned *Lynn Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation, et al.*, Case No. 140908394, Third District Court (the *Becker* lawsuit).

7. Defendant Lynn D. Becker ("Defendant Becker") is an individual who was employed by the Ute Tribe on its U&O Reservation from 2003 through 2007.

STATEMENT OF FACTS

8. Plaintiff Ute Tribe resides on the Uintah and Ouray ("U&O") Indian Reservation in northeastern Utah. The Tribe has a tribal membership of almost four thousand

individuals, and over half of its membership lives on the U&O Reservation. The Ute Tribe operates its own tribal government and oversees approximately 1.3 million acres of trust lands, some of which contain significant oil and gas deposits. Revenue from the development of these oil/gas resources is the primary source of money that is used to fund the Tribe's government and its health and social welfare programs for tribal members.

9. For a period of seven years, from 2000 through 2007, a cabal of unscrupulous non-Indians insinuated themselves into the Ute Tribe's government and its Energy and Minerals Department and, through a pattern of fraud, subterfuge and bullying, attempted to secure for themselves an interest in the Tribe's oil and gas mineral estate. Working ostensibly as tribal "employees" or "Independent Contractors," the coterie of unscrupulous individuals manipulated tribal members, manipulated tribal officers and departments, manipulated facts and numbers, and manipulated the Tribe's oil/gas transactions in a manner that was both fraudulent and a gross breach of the individuals' fiduciary duties as employees and agents of the Ute Tribe.

10. One of those unscrupulous individuals was the Defendant Lynn Becker.

11. Other unscrupulous individuals and entities included John P. Jurrius, the Tribe's purported "Financial Consultant," and his business entities, the Jurrius Group LLP and Jurrius Ogle Group LLC, whom the Ute Tribe sued in 2008 on multiple counts of civil wrongdoing, including fraud and conversion, in a suit captioned *Ute Indian Tribe v. Jurrius, et al.*, case number 1:08-cv-01888, in the U. S. District Court for the District of Colorado.

12. At Mr. Jurrius' recommendation, Defendant Becker came to work for the Tribe as a petroleum landman in 2003; however, it was not for another two years, on April 27, 2005,

that Defendant Becker and the Tribe executed a so-called "Independent Contractor Agreement" (hereinafter "IC Agreement"). The IC Agreement purported to operate retroactively to March 1, 2004, and to provide for Becker's employment as the "Land Division Manager" of the Tribe's Energy and Minerals Department. A copy of the IC Agreement is attached hereto as Exhibit A.

13. As discussed in more detail *infra*, the United States Internal Revenue Service ("IRS") later challenged the legality of Defendant Becker's so-called "Independent Contractor Agreement" (as well as the IC Agreements of other members of the unscrupulous cabal whose employment with the Tribe Mr. Jurrius orchestrated), and the IRS assessed the Tribe with back employment-taxes for Defendant Becker, whom the IRS determined to be an *employee*, not an independent contractor. *See* Exhibit B.

14. At the suggestion of Mr. Jurrius—the Tribe's purported "Financial Consultant"—the Tribe established a Venture Fund that was to function as the Tribe's "business arm." The Venture Fund was managed by the Venture Fund Board, which was charged with "making investment decisions on behalf and in the best interests of the Tribe," and then managing those tribal investments.

15. Mr. Jurrius—the Tribe's purported "Financial Consultant"—installed himself as the Venture Fund Board's Executive Director and Secretary. A sub-set of the Venture Fund Board—the Board's Executive Officers, consisting of Defendant Becker, Mr. Jurrius and Jurrius' business partner Bob Ogle—were charged with analyzing potential investments, business opportunities and contracts, and making recommendations to the Venture Fund Board whether to engage in particular investments and business opportunities. In effect, Defendant

Becker and Messrs. Jurrius and Ogle appointed themselves as Executive Officers of the Venture Fund and in that capacity controlled—and in fact, usurped the authority of—the Venture Fund Board, the very entity that was supposed to oversee their actions and approve or disapprove of their recommendations.

UTE HOLDINGS AND UTE ENERGY

16. On May 4, 2005, at the behest of Defendant Becker and Messrs. Jurrius and Ogle, the Tribe simultaneously organized Ute Energy Holdings LLC and Ute Energy LLC, and entered into a series of complicated, convoluted commercial transactions that were designed, *inter alia*, to transfer interests in the Ute Tribe's mineral estate to Defendant Becker and to Messrs. Jurrius and Ogle, through their business entities, the Jurrius Group and the Jurrius/Ogle Group (hereinafter "Jurrius/Ogle").

17. The complex, multi-tiered transactions were planned deliberately to both facilitate and simultaneously obscure and conceal the fraudulent transfer of tribal assets to the unscrupulous non-Indians. These transactions, described below, were the subject of the Tribe's claims against Mr. Jurrius and his business entities in *Ute Indian Tribe v. Jurrius, et al.*, case number 1:08-cv-01888, U. S. District Court for the District of Colorado, referenced in paragraph 11 above.

18. As the initial step in the multi-tiered transactions, the Tribe assigned interests in the Tribe's oil/gas estate to Ute Energy Holdings LLC ("Ute Holdings"). Although there was never any prior or predicate assignment of tribal oil/gas assets from the Tribe to Jurrius/Ogle—and although the Tribe's assignment of its oil/gas assets constituted 100% of the initial capital assets of Ute Holdings—the Operating Agreement for Ute Holdings listed Jurrius/Ogle as a

member of Ute Holdings, and listed Jurrius/Ogle's as having made a capital contribution consisting of a five percent "undivided" interest in the tribal oil/gas assets that were assigned to Ute Holdings.

19. Ute Holdings then contributed 100% of its assets—i.e., the beneficial interest in the Tribe's oil/gas estate—to capitalize Ute Energy LLC ("Ute Energy"). These assets constituted 100% of the initial capital assets of Ute Energy. As with Ute Holdings, although there was never any prior or predicate assignment of tribal oil/gas assets from the Tribe to the Jurrius/Ogle—and although the Tribe's assignment of its oil/gas assets constituted 100% of the initial capital assets of both Ute Holdings and Ute Energy—the Operating Agreement for Ute Energy listed Jurrius/Ogle as a member of Ute Energy, and listed Jurrius/Ogle as having made a capital contribution consisting of a ten percent "undivided" interest in the tribal oil/gas assets that had been assigned, first to Ute Holdings and then immediately thereafter to Ute Energy.

20. Ute Energy, in turn made an assignment back to Ute Holdings LLC of a 90% working interest in Ute Energy LLC.

21. The multi-tiered, convoluted commercial transactions did not end there. The transactions also included a Master Agreement among Ute Holdings and Ute Energy and Laminar Direct Capital L.P. ("Laminar"). Under that Master Agreement Laminar paid four million dollars to acquire a ten percent interest in Ute Energy.

22. At the direction of Defendant Becker, Mr. Jurrius and Jurrius/Ogle, Defendant Becker received a distribution of 2 percent—or $68,000.00—of the net proceeds of the four million dollars that Laminar paid to acquire its ten percent interest in Ute Energy. Jurrius/Ogle itself collected a distribution of $550,000.00 from the Laminar transaction.

23. Emboldened by this coup d'éclat, Defendant Becker and Jurrius/Ogle proceeded for the next two years to grossly mismanage the Tribe's oil/gas assets while simultaneously enriching themselves, including without limitation, transferring additional Ute tribal oil/gas assets into Ute Holdings, and from Ute Holdings on to Ute Energy. The two-tiered transfers were planned deliberately to insure that Defendant Becker and Jurrius/Ogle could both claim their respective "skims" on each tier of the transfer of a tribal oil/gas assets into Ute Holdings and Ute Energy.

24. In addition, Mr. Jurrius—the Tribe's purported Financial Investor—installed himself as the Manager of Ute Energy, and in that capacity Jurrius—assisted by Messrs. Becker and Ogle—proceeded to dissipate Ute Energy's operating capital. Because of their mismanagement, Ute Energy was forced to raise new capital by selling interests in the company to outside investors, a move that naturally reduced the Tribe's ownership interest in Ute Energy proportionately.

IRS INVALIDATION OF BECKER'S INDEPENDENT CONTRACTOR AGREEMENT

25. Mr. Jurrius—the Tribe's purported "Financial Consultant"—exercised control over the Tribe's affairs by installing trusted associates in key positions throughout the Tribe's government, and he persuaded the Tribe to hire his associates under "Independent Contractor" (IC) Agreements. As detailed above, one of those key Jurrius associates was Defendant Lynn Becker.

26. The United States Internal Revenue Service (IRS) later challenged the legality of the multiple IC Agreements for calendar years 2005, 2006 and 2007, including the IC Agreement with Defendant Becker. *See* Exhibit B.

27. The Tribe was able to negotiate a "Closing Agreement" with the IRS, in which, in return for the Tribe paying federal employment tax for calendar year 2007 on Defendant Becker and the other Jurrius associates, the IRS agreed not to seek additional back taxes or penalties. However, the IRS required that Defendant Becker and other Jurrius associates be "treated as *employees* for all federal employment tax purposes" going forward. *See* Exhibit C.

DEFENDANT BECKER'S EMPLOYMENT FOR THE TRIBE

28. Defendant Becker worked initially as a landman and then as the "Land Division Manager" of the Tribe's Energy and Minerals Department. Mr. Becker's job duties were to manage and develop the Tribe's energy and mineral resources, and the Tribe's Energy and Minerals Department, both of which are located within the boundaries of the Tribe's U&O Reservation. The so-called "Independent Contractor Agreement" between the Tribe and Becker was negotiated and executed at the Tribe's headquarters in Fort Duchesne on lands inside the Tribe's U&O Reservation. Defendant Becker's office was located inside tribal headquarters in Fort Duchesne.

29. The so-called "Independent Contractor Agreement" between the Tribe and Defendant was never authorized by the U. S. Congress or approved by the Secretary of the Department of Interior, as required by federal law and the Ute Tribe's Constitution.

DEFENDANT BECKER'S CLAIMS IN THE BECKER LAWSUIT

30. The *Becker* Lawsuit was filed in the Third Judicial District Court of the State of Utah, on December 11, 2014. The suit was brought against the Ute Tribe, its tribal Business Committee, and Ute Holdings LLC. The suit seeks to recover money that Defendant Becker

alleges is owed to him under the so-called "Independent Contractor Agreement." *See* Exhibit D.

COUNT I

DECLARATORY JUDGMENT, 28 U.S.C. § 2201

The Utah State Court's Lack of Subject Matter Jurisdiction

31. Plaintiffs reallege paragraphs 1 through 30 and incorporate them by reference.

32. A long-standing body of federal statutory and decisional law prohibits state courts in Utah from exercising jurisdiction over suits brought against Indian tribes, tribal members, or tribal entities arising from alleged wrongs committed within Indian country. That body of federal law includes, without limitation:

(i) the Ute Treaties of 1863 and 1868, 13 Stat. 673 and 15 Stats. 619;

(ii) the Utah Enabling Act of 1894, 28 Stats. 107, and the Utah Constitution, art. III, §2, in which the State of Utah "forever" disclaimed all right and title to "all lands … owned or held by any Indian or Indian tribes;"[1]

(iii) 18 U.S.C. §§ 1151 and 1152 which statutorily define Indian Country and preclude state jurisdiction and the application of state law within Indian Country;[2]

[1] The disclaimer disclaims both proprietary and governmental authority. *Seneca-Cayuga Tribe of Oklahoma v. State of Oklahoma*, 874 F.2d 709, 710, 716 (10th Cir. 1989) (considering the disclaimer in the Oklahoma Enabling Act which is identical to the Utah Enabling Act of 1894); *Indian Country, U.S.A., Inc. v. Okla. Tax Comm'n.*, 829 F.2d 967, 976-81 (10th Cir. 1987) (same).

[2] "Indian country," as defined in 18 U.S.C. § 1151, includes "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and in including rights-of-way running through the reservation." This definition applies to questions of both criminal and civil jurisdiction. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 n.5 (1987) (citing *DeCoteau v. District County Court*, 420 U.S. 425, 427 n.2 (1975).

(iv) 25 U.S.C. §§ 1321-1326, which prescribes the exclusive means by which the State of Utah may exercise criminal and/or civil jurisdiction over Indians within Indian Country in Utah;[3] and

(v) the Supremacy Clause of the U. S. Constitution, art. VI, § 2, which provides that "the Laws of the United States … and all Treaties made … shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby…."

33. The Ute Tribal Business Committee lacked authority to unilaterally, though its contract with Defendant Becker, vest subject matter jurisdiction in the State Courts of Utah, in circumvention of the foregoing body of controlling federal law. *Kennerly v. District Court*, 400 U.S. 423, 428-29 (1971).

34. In presiding over the *Becker* Lawsuit, Utah District Judge Lawrence is acting under color of state law, and without jurisdiction over the subject matter of the lawsuit.

35. Judge Lawrence's actions in presiding over the *Becker* lawsuit have deprived the Plaintiffs of their liberty interests secured by the due process clause of the Fourteenth Amendment to the U. S. Constitution to have the *Becker* lawsuit litigated in a forum that has jurisdiction over the subject matter.

36. Judge Lawrence, in presiding over the *Becker* lawsuit, and Defendant Becker, in pursuing his claims in state court, are infringing on the right of the Ute Tribe to exercise jurisdiction over reservation affairs through its tribal court.

[3] Indian tribes in the State of Utah have never consented to state jurisdiction over their reservations pursuant to 25 U.S.C. §§ 1321-1326. *United States v. Felter*, 752 F.2d 1505, 1508 n.7 (10th Cir. 1985).

37. Therefore, an actual and justiciable controversy exists between Plaintiffs on the one side and Judge Lawrence and Defendant Becker on the other.

COUNT II

DECLARATORY JUDGMENT, 28 U.S.C. § 2201

The Independent Contracting Agreement is a Legal Nullity Under Federal and Tribal Law

38. Plaintiffs reallege paragraphs 1 through 37 and incorporate them by reference.

39. The so-called "Independent Contractor Agreement" between the Tribe and Defendant Becker provided for Becker to "receive a beneficial interest of two percent (2%) of net revenue distributed to Ute Energy Holding, LLC (sic) from Ute Energy, LLC (sic)." *See* Exhibit A, p. 13.

40. The Agreement with Defendant Becker is void for lack of necessary federal approval as required under both (*i*) the Ute Tribe's Constitution, and (*ii*) under federal common law and Congressional statutes that prohibit the alienation, or encumbrance, of Indian property and interests in Indian property. That body of federal and Ute tribal law includes, without limitation:

(i) the Indian Mineral Development Act, 25 U.S.C. § 2102(a), which requires the Secretary of the Interior to approve any "service" or "managerial" agreement related to the "exploration for, or extraction, processing, or other development of" Indian oil and gas mineral resources;

(ii) the Non-Intercourse Act, 25 U.S.C. § 177, which prohibits any "grant … or other conveyance of [Indian] lands, or of any title or claim thereto" unless authorized by Congress;

(*iii*) the Indian Reorganization Act, 25 U.S.C. § 464, which prohibits the "sale, devise, gift, exchange or other transfer of restricted Indian lands or of shares in the assets of any Indian Tribe," unless authorized by Congress;

(*iv*) 25 U.S.C. § 85 which states that "[n]o contract made with any Indian, where such contract relates to the tribal funds or property in the hands of the United States, shall be valid, nor shall any payment for services rendered in relation thereto be made unless the consent of the United State has previously been given;" and

(*v*) the Tribe's Constitution, art. VI (1)(c), which limits the power of the Tribe's Business Committee to "approve … any sale, disposition, lease or encumbrances of tribal lands, interest in tribal lands, or other tribal assets," by specifying that the Tribe's Business Committee can approve only those contracts that have been first "authorized or executed by the Secretary of Interior." *See* Exhibit E.

41. As stated *infra*, paragraph 29, the so-called "Independent Contractor Agreement" between the Tribe and Defendant Becker was never authorized by the U. S. Congress or approved by the Secretary of the Department of Interior, as required by federal law and by the Ute Tribe's Constitution.

42. Plaintiffs contend that the so-called "Independent Contractor Agreement" is a nullity for lack of necessary federal approval; Defendant Becker contends the Agreement is enforceable notwithstanding the requirements of federal and Ute tribal law. Therefore, an actual and justiciable controversy exists between Plaintiffs on the one side and Defendant Becker on the other.

COUNT III

DECLARATORY JUDGMENT, 28 U.S.C. § 2201

The Ute Tribe Did Not Validly Waive Sovereign Immunity

43. Plaintiffs reallege paragraphs 1 through 42 and incorporate them by reference.

44. As a matter of federal law, Indian tribes, tribal officers, and tribal commercial entities are not subject to suit unless the tribe has waived sovereign immunity or Congress has expressly authorized the action. "Tribal immunity is a matter of federal law." *Kiowa Tribe v. Mfg. Techs. Inc.*, 523 U.S. 751, 756 (1998).

45. The U.S. Supreme Court has said that tribal sovereign immunity is a jurisdictional barrier to a court's "exercise of judicial power." *United States v. U.S. Fid. Guar. Co.*, 309 U.S. 506, 514 (1940).

46. An "essential attribute" of sovereign immunity is the "entitlement not to stand trial." *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985). "The entitlement is an *immunity from suit* rather than a mere defense to liability; and … it is effectively lost if a case is erroneously permitted to go to trial." *Id*. at 526 (emphasis in original).

47. Under the Ute Tribe's tribal law, the Tribe, its officers, employees, and tribal commercial entities have sovereign immunity "from any suit in any civil action," except "as required by federal law … or as specifically waived by a resolution or ordinance of the Business Committee specifically referring to such [waiver of sovereign immunity]." Ute Indian Tribe Law and Order Code ("U.L.O.C."), Section 1-8-5. *See* Exhibit F.

48. There is no resolution or ordinance duly adopted by the Tribe's Business Committee that "specifically" waives the Tribe's sovereign immunity for suit on the so-called "Independent Contractor Agreement" between the Tribe and Defendant Becker

49. Nor is there any federal law that waives the Tribe's sovereign immunity for suit by Defendant Becker.

50. Nor does the "sue or be sued" clause under the Tribe's Section 17 Corporation constitute a waiver of the Tribe's sovereign immunity for suit by Defendant Becker.

51. Finally, claims asserted against the Tribe's Business Committee are "essentially against the tribe itself" and are likewise barred by tribal sovereign immunity. *Kenai Oil & Gas, Inc. v. Dept. of Interior*, 522 F. Supp. 521, 531 (D. Utah 1981).

52. Plaintiffs contend there has been no valid waiver of tribal sovereign immunity for the claims asserted in the *Becker* lawsuit; Defendant Becker contends otherwise. Therefore, an actual and justiciable controversy exists between Plaintiffs on the one side and Defendant Becker on the other.

COUNT IV

INJUNCTIVE RELIEF

53. Plaintiffs reallege paragraphs 1 through 52 and incorporate them by reference.

54. Defendant Judge Lawrence has denied the Tribe's motion to dismiss the *Becker* lawsuit, and discovery in that case is currently underway.

55. On Friday, June 10, 2016, Defendant Becker filed a motion asking the Utah state court to enter a $23-million dollar default judgment against the Plaintiffs as a discovery sanction.

56. Plaintiffs are suffering harm at the hands of Defendants in that Defendants have instituted and are allowing the *Becker* lawsuit to proceed in Utah state court despite the fact that (*i*) federal law prohibits the State of Utah from exercising civil jurisdiction over the suit, (*ii*) the so-called "Independent Contractor Agreement" on which the suit is brought is a nullity under federal and Ute tribal law, and (*iii*) Plaintiffs have sovereign immunity against the claims asserted. If the *Becker* lawsuit is allowed to proceed, Plaintiffs will suffer extreme hardship and irreparable harm by having to defend against, and stand trial for, suit in a state court that lacks subject matter jurisdiction.

57. Plaintiffs have no adequate or speedy remedy at law for the conduct of Defendants, and this action for injunctive relief is Plaintiffs' only means for securing adequate relief.

PRAYER FOR RELIEF

Based upon the allegations above, Plaintiffs respectfully pray for an Order of the Court:

A. Declaring that (*i*) the Utah state court lacks subject matter jurisdiction over the *Becker* lawsuit; (*ii*) that the contract between the Plaintiff Tribe and Defendant Becker is a nullity under the Tribe's Constitution and under federal common law and statutory restraints on the alienation of Indian property; and (*iii*) that the jurisdictional bar of tribal sovereign immunity precludes Defendant Becker's claims against Plaintiffs.

B. Issue a temporary restraining order and preliminary injunction ordering the Defendants, and all those in active concert or participation with them to refrain immediately from proceeding with the *Becker* lawsuit.

C. Permanently enjoin Defendant Judge Lawrence from exercising jurisdiction over the *Becker* lawsuit and permanently enjoin Defendant Becker from pursuing such claims; and

D. Granting such other and further relief as the Court deems just and proper.

DATED this 13th day of June, 2016.

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