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**UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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VANCE NORTON, GARY JENSEN, KEITH  
CAMPBELL, ANTHONY BYRON,  
BEVAN WATKINS, and TROY SLAUGH,

Plaintiffs,

v.

THE UTE INDIAN TRIBE OF THE UINTAH  
AND OURAY INDIAN RESERVATION, a  
federally recognized Indian Tribe; the  
BUSINESS COMMITTEE FOR THE UTE  
INDIAN TRIBE OF THE UINTAH AND  
OURAY INDIAN RESERVATION, in its  
official capacity; the UTE TRIBAL COURT  
OF THE UINTAH AND OURAY  
RESERVATION; the HONORABLE  
WILLIAM REYNOLDS, in his official  
capacity as Acting Chief Judge of the Ute  
Tribal Court; DEBRA JONES and ARDEN  
POST, individually and as the natural parents  
of Todd R. Murray; and DEBRA JONES as  
personal representative of the Estate of Todd  
R. Murray.

Defendants.

**PLAINTIFFS' MEMORANDUM  
OPPOSING MOTION TO  
DISMISS FOR ALLEGED  
INSUFFICIENCY OF PROCESS**

Case No. 2:15-cv-00300

Judge: Dee Benson

**ORAL ARGUMENT REQUESTED**

Vance Norton, Gary Jensen, Keith Campbell, Anthoney Byron, Bevan Watkins, and Troy Slaugh (collectively “Uintah/Vernal Plaintiffs”) commenced this action against the Ute Indian Tribe of the Uintah and Ouray Reservation, the Business Committee for Ute Indian Tribe of the Uintah and Ouray Reservation, the Ute Tribal Court of the Uintah and Ouray Reservation, the Honorable William Reynolds as acting Chief Judge of the Ute Tribal Court, Debra Jones and Arden C. Post, individually, and Debra Jones as personal representative of the Estate of Todd R. Murray on behalf of the heirs of Todd R. Murray. The Uintah/Vernal Plaintiffs commenced this action to have this Court review the question of the Ute Tribe and Ute Tribal Court’s jurisdiction and lawful authority over them.

Specifically, the Uintah/Vernal Plaintiffs are asking for a declaratory judgment to the effect that the Ute Tribe and Ute Tribal Court lack subject matter jurisdiction to prosecute and/or to hear the claims being brought against them in the Ute Tribal Court and, based upon that ruling, for an *Order* enjoining the prosecution of these claims in the Ute Tribal Court. In the alternative, if this Court determines that the Uintah/Vernal Plaintiffs are subject to suit in the Ute Tribal Court, then the Uintah/Vernal Plaintiffs are asking for a declaratory judgment to the effect that the Ute Tribe and Ute Tribal Court are “*Federal Actors*” so as to

entitle them to the full protections of the *United States Constitution* in all proceedings before the Ute Tribal Court, and for an *Order* enjoining the Ute Tribe and Ute Tribal Court from denying the Uintah/Vernal Plaintiffs the rights otherwise guaranteed to them under the *United States Constitution* and federal law.

Instead of answering the *Complaint*, the Ute Indian Tribe and its Business Committee (collectively “Ute Tribal Defendants”) have filed a *Motion to Dismiss*.<sup>1</sup> In that *Motion*, the Ute Tribal Defendants join in by reference the *Motion to Dismiss* that was earlier filed by the Ute Tribal Court and its Chief Judge, William Reynolds.<sup>2</sup> In addition to that joinder, the Ute Tribal Defendants raise for the first time the argument that they should also be dismissed for the lack of the valid service of process upon them.

The Uintah/Vernal Defendants hereby respond to the Ute Tribal Defendants’ *Motion to Dismiss* based on an alleged lack of personal jurisdiction.<sup>3</sup>

**Oral argument is requested.**

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<sup>1</sup> Doc. 27.

<sup>2</sup> Doc. 23. By reference, the Uintah/Vernal Plaintiffs respond by incorporating the arguments raised in their response to the Tribal Court Defendants’ *Motion to Dismiss* at Doc. 32.

<sup>3</sup> Doc. 27.

### **PERSONAL JURISDICTION EXISTS**

Without reference to a case, statute, or rule of civil procedure, the Ute Tribal Defendants claim that this Court lacks personal jurisdiction over them due to insufficient process and/or insufficient service of process. The Ute Tribal Defendants also do not support their assertion that this Court lacks personal jurisdiction over them with affidavits or declarations. Instead, lacking any legal or evidentiary support, the Ute Tribal Defendants claim that service upon them must be in accordance with Ute tribal law, not Federal law, and that under Ute tribal law service was defective because it was not made upon all members of the Ute Business Committee by a person who had the permission of the Ute Tribe to serve process. But Ute Tribal Defendants' contentions about defective service can be disposed of in a rather summary fashion.

To begin with, proceedings before this Court are governed by the *Federal Rules of Civil Procedure*,<sup>4</sup> which provide that “[a] summons and complaint shall . . . be served by any person who is not a party and is not less than 18 years of age,”<sup>5</sup> which was done in this case. There is no federal law requiring a process server to

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<sup>4</sup> See *Benney v. Pipes*, 799 F.2d 489, 493 (9th Cir. 1986) (“In a federal question case . . . , federal procedural law indisputably controls”).

<sup>5</sup> *Federal Rule of Civil Procedure* 4 (c)(2)(B).

obtain the prior approval of the Ute Tribal Court in order to serve Ute Tribal Defendants with a *Summons* issued by the Clerk of the United States District Court.<sup>6</sup>

Neither does federal law require the Uintah/Vernal Plaintiffs to serve every member of the Business Committee to effectively hail the Business Committee and Ute Tribe before this Court. They only need serve an officer, a managing or general agent of each,<sup>7</sup> which the Uintah/Vernal Plaintiffs did in the instant case.<sup>8</sup> Ute Tribal Defendants, therefore, were properly served when copies of the *Summons* and *Complaint* were delivered to Ronald Wopsock, Vice-Chairman of the Business Committee, and to Business Committee Members Bruce Ignacio, Shawn Chapoose, and Philip Chimburras.<sup>9</sup>

Ute Tribal Defendants argue, however, without any supporting evidence or law, that this service was defective because Mr. Chapoose was served at 9:50 AM on May 11, 2015, allegedly before he was formally sworn in as a Member of the

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<sup>6</sup> *Cf. Benny*, 799 F.2d at 494-95 (If they are over the age of 18 and not a party to the action, even inmates can serve a *Summons* and *Complaint*).

<sup>7</sup> *See Federal Rule of Civil Procedure* 4(h).

<sup>8</sup> *See Proofs of Service* Doc. 15 through 21.

<sup>9</sup> *See id.*

Business Committee and that Mr. Cimburas was served at 11:00 AM that same day supposedly after his term as a Member of the Business Committee had expired. This according to Ute Tribal Defendants renders service upon them defective under Ute tribal law because all of the Business Committee Members were not served. But Tribal Defendants have offered no proof of this to overcome the presumption of valid service inherent in the filing of a sworn return of service.<sup>10</sup> Yet, even if they had presented the Court with evidence and law to support this argument, service upon the Ute Tribe and Business Committee would still be valid.

The Business Committee is the governing body of the Ute Tribe.<sup>11</sup> Ronald Wopsock is Vice-Chairman of the Business Committee and in that capacity he was personally served with copies of the *Summons* and *Amended Complaint* addressed to the Ute Tribe and its Business Committee,<sup>12</sup> which is all that federal law requires since, as Vice-Chairman, he was an officer, managing agent or general

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<sup>10</sup> *Som v. Daniels Law Offices, P.C.*, 573 F. Supp. 2d 349, 354 (D. Mass. 2008).

<sup>11</sup> *See* Ute Constitution, Art. III, Doc. 32-12. .

<sup>12</sup> *See Proof of Service* Doc. 18 and 21.

agent for both the Ute Tribe and the Business Committee.<sup>13</sup> Similarly, Bruce Ignacio, a Member of the Business Committee was also served as a managing or general agent of the Ute Tribe.<sup>14</sup>

Furthermore, the Ute Tribal Court and its Chief Judge were served on May 11, 2015.<sup>15</sup> On May 19, 2015, Mr. Preston Stieff entered an appearance on behalf of all of the Defendants, including the Tribal Defendants.<sup>16</sup> Thereafter, the Tribal Court and Judge Reynolds filed a *Motion to Dismiss*, but did not raise in that *Motion* any challenge to the sufficiency of Plaintiffs' service of process upon them.<sup>17</sup> Not having done so, these two Defendants have waived any challenge as to the Court's personal jurisdiction over them,<sup>18</sup> and so, too, have the Ute Tribal Defendants when a general appearance was entered on their behalf.<sup>19</sup>

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<sup>13</sup> See *Federal Rule of Civil Procedure* 4(h).

<sup>14</sup> See *Proof of Service* Doc.15.

<sup>15</sup> See *Proofs of Service*, Doc. 13 and 14.

<sup>16</sup> Doc. 22.

<sup>17</sup> See Doc. 23.

<sup>18</sup> *Pardazi v. Cullman Med. Ctr.*, 896 F.2d 1313, 1317 (11th Cir. 1990)(A defendant must raise the lack of personal jurisdiction defense in his or her *Answer* or first *Motion to Dismiss*, otherwise it is waived).

<sup>19</sup> See *Benney*, 799 F.2d at 492.

**CONCLUSION**

For the reasons stated herein above, Tribal Defendants' *Motion to Dismiss* should be denied.

Dated this 26<sup>th</sup> day of June 2015.

SUITTER AXLAND, PLLC

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of June, 2015, I electronically filed the foregoing **MEMORANDUM** with the U.S. District Court for the District of Utah.

Notice will automatically be electronically mailed to the following individual(s) who are registered with the U.S. District Court CM/ECF System:

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