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

VANCE NORTON, ET AL

V.
THE UTE INDIAN TRIBE OF THE
UINTAH AND OURAY RESERVATION,
ET AL.

CASE NO. 2:15-CV-00300

Judge Dee Benson

DEFENDANT UTE INDIAN TRIBE and
BUSINESS COMMITTEE'S REPLY IN
SUPPORT OF MOTION TO DISMISS

Through their motion to dismiss, Dkt. 27, the Tribe and its Business Committee joined arguments previously raised by the Tribe's Court and Judge. Plaintiffs similarly rely upon their response to the Tribal Court and Judge's motion to dismiss, and the Tribe will similarly incorporate its reply on that matter, and herein will only brief the issue, unique to the Tribe and its Business Committee, of failure to service upon the Tribe and its Business Committee.

Plaintiffs understand what is required to serve the Tribe and its Business Committee. Dkt. 15-21; 27, 27-1, 27-2. But: 1) their process server plainly erred and rather than fixing those errors Plaintiffs are pretending to this Court that the errors are inconsequential; and 2) Plaintiffs are

unwilling to comply with the applicable law, and are instead asking this Court to hold that this Court's jurisdiction can be invoked when a plaintiff has a person intentionally trespass to "serve" process. Neither of Plaintiffs' arguments has any merit, and if either is rejected, this Court should dismiss for failure to obtain personal jurisdiction over the defendants.

I. PLAINTIFFS' FAILURE TO SERVE ALL MEMBERS OF THE BUSINESS COMMITTEE REQUIRES DISMISSAL.

Plaintiffs plainly understood that they were required to serve each of the six members of the Tribe's Business Committee, and they had process issued for each member and attempted service on each member. Dkt. 15-21. But Plaintiffs' process server simply failed to effectuate the service that Plaintiffs intended to make. Dkt. 27. Now that the Tribe and its Business Committee have moved to dismiss based upon this failed attempt at service, Plaintiffs, instead of admitting their error and seeking to correct it, assert without citation that they only needed to serve any one member of the Tribe's Business Committee.

Federal Rule of Civil Procedure (FRCP) 4 does not specify the method for service upon a tribe or non-corporate tribal entity. The only law which has been cited to this Court which covers this legal issue is the Tribe's own law, which require service upon all six members. And, under the only law cited to this Court, Plaintiffs failed to effectuate service.

Plaintiffs' counterargument is the disrespectful contention that a Tribe is merely a "Partnership or Association," and therefore is to be served in the manner provided for in FRCP 4(h). Pl. Resp. at 5. Plaintiffs are wrong. Federally recognized Indian Tribes are governments that pre-date the United States and continue to exist, *United States v. Wheeler*, 435 U.S. 313, 322 (1978), and FRCP 4 makes it clear that FRCP 4(h) does not apply to governments. Most governments come under FRCP 4(i) and 4(j), but Rule 4 does not cover service upon tribes.

Instead one must turn to other laws to determine how to serve a tribal entity, and here that law is the Tribe's laws. *Cf.* FRCP 4(j)(2) (providing that one method of servicing a state is to serve in the manner provide for by state law). The Tribe's law requires service upon all six members of the Business Committee. Plaintiffs attempted but failed to serve all six members. Now, instead of asking this Court to permit an attempt to correct their error, they dig in, turning this matter into a test case of their theory that tribes are "partnerships or associations". They lose on that issue, and the Court should dismiss.

II. PLAINTIFFS' WERE AWARE THAT THEIR PROCESS SERVER REQUIRED A PERMIT TO ENTER TRIBAL LAND, AND THIS COURT SHOULD NOT PERMIT ITS PROCESS TO BE "SERVED" DURING A KNOWING TRESPASS.

In their motion to dismiss, the Tribe and Business Committee show that Plaintiffs had prior knowledge that those who it delegated to serve process would commit trespass if they entered onto land owned by the Tribe and attempted to conduct service without first obtaining permits to enter onto the Tribe's land. Dkt 27-1; 27-2.¹ Despite this knowledge, Plaintiffs sent their process servers out without the legally required permit. Under these facts, this Court should hold that the alleged service of this Court's process during that trespass is invalid.

Plaintiffs' primary response is the non-sequitur that the people they had commit the trespass were over 18 years of age, and therefore meet the requirement of FRCP 4(c)(2). But the issue here is not who they chose to serve the process. Instead the issue is how they went about service—i.e. that they knowingly had the process servers, while acting as Plaintiffs' agents and as

¹ This case should be limited to the current facts—Plaintiffs' knowledge of the need for permission via permit to enter the land at issue, Plaintiff's process server's failure to obtain that permit, and the lack of any assertion by Plaintiffs that the process server was responsible for the failure to obtain a permit. That is, if Plaintiffs had been unaware of the applicable tribal trespass law, or if Plaintiffs had instructed the process server to obtain the required permit but the process server then failed to obtain the requisite permit to enter, the analysis would be different, but this Court should limit itself to the current narrow facts of a knowing trespass.

extensions of this Court, trespass and then serve process during that trespass. This Court should not permit that to be valid service.

Respectfully submitted this 6th day of July, 2015.

/s/ Jeffrey S. Rasmussen

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of July, 2015, I electronically filed the foregoing DEFENDANT UTE INDIAN TRIBE and BUSINESS COMMITTEE'S REPLY IN SUPPORT OF MOTION TO DISMISS, with the Clerk of the Court and emailed the same filing to all parties of record as through the ECF System:

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/s/ Ashley Klinglesmith

Ashley Klinglesmith