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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 TRIBAL COURT'S
RESPONSE TO MOTION FOR
PRELIMINARY INJUNCTION

DISCUSSION OF LAW

Plaintiffs Norton, Jenson, Campbell, Byron, Watkins, and Slaugh (Plaintiffs) seek to enjoin the Tribe, its Business Committee, the Ute Court, Judge Reynolds, Debra Jones, and Arden Post from prosecuting a suit filed in the Ute Court. Dkt. 32. Ironically, Plaintiffs make their motion

after previously rejecting Defendants' offer to stay both the Ute Court matter and the present matter until the Tenth Circuit ruled on the appeal in *Jones v. Norton*, 10th Cir. Case 14-4144.¹

Nearly all of Plaintiffs' motion for an injunction duplicates arguments which Plaintiffs made in response to the Tribal Court's motion to dismiss this case. The Tribal Court has provided this Court with a thorough reply to those arguments, showing that Plaintiffs arguments are without any merit. As shown therein, Plaintiffs have not met the requirement that they exhaust Tribal Court remedies, and this Court lacks jurisdiction over this case for multiple reasons. This Court therefore cannot issue an injunction or any other relief.

The case law which firmly establishes that parties must exhaust tribal court remedies before going to federal court weigh the potential harms to the parties and the tribal courts, and those cases hold that except in rare cases very different from the current matter, exhaustion of Tribal Court remedies is required. These issues have all been thoroughly briefed. There is no need to duplicate those arguments here.

It is frustrating that despite the Tribal Court's fair and correct discussion of the facts, procedural history and law, Plaintiffs continue to assert their thoroughly debunked factual and legal arguments. The Ute Court plaintiffs did not refile claims which had been dismissed. Plaintiffs' conjecture about various Defendants' motives is contrary to logic and factually unsupported. Assuming the facts of the Ute Court complaint, as a court must do at this point, the Ute Court clearly has jurisdiction over the complaint.

¹ The Tribe's offer to stay and Plaintiffs' response were both on the record in open Court before Judge Jenkins in *Poulson v. Ute Tribe*, case 12-497, and are not being used to prove any substantive contention. The offer and rejection are therefore not subject to exclusion under Evidence Rule 408.

The only new argument which Plaintiffs raise is a wholly unsupported and improper assertion that the Tribe's attorneys are corrupt that they "most certainly will, directly or indirectly, control all proceedings in the Ute Tribal Court." Dkt. 32 at 14.² This argument is beyond the pale: the undersigned know of no other court where this type of open unsupported personal attacks on opposing counsel are permitted. This Court should strike this wholly unsupported assertion from the record.

The Tribal Court also notes that the unsupported and defamatory allegation would be legally insufficient even if it were not struck. "*Iowa Mutual [Insurance Co. v. LaPlante*, 480 U.S. 9 (1987)] required a non-Indian party alleging bias and incompetence on the part of the tribal court to litigate these issues in tribal court. *Bank of Okla. v. Muscogee (Creek) Nation*, 972 F.2d 1166, 1171 (10th Cir. 1992).

CONCLUSION

As the Tribe and Tribal Court have discussed in their motion to dismiss, this Court must dismiss this suit because there is not yet a federal question presented. The only proffered basis for a federal question is that the Tribal Court is exceeding the scope of its jurisdiction, but that federal question is unquestionable not yet presented. It would not be presented until Plaintiffs exhaust Ute Court remedies. This Court must dismiss this matter, so that Plaintiffs are required to comply with the law which requires exhaustion of Ute Court remedies. Plaintiffs ad hominem argument and repetition of arguments which have been shown to be wrong in previously completed briefing does not change anything.

² Plaintiffs base their argument in part upon the false factual assertion that "in the initial Complaint that was filed in State Court, Ms. Bassett alleged on behalf of her client that: 'Jurisdiction lies in this [State] Court.' Dkt. 32 at 8. Ms. Bassett neither signed nor filed that Complaint.

July 6, 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 TRIBAL COURT'S RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION, with the Clerk of the Court and emailed the same filing to all parties of record as through the ECF System:

/s/ Jeffrey S. Rasmussen