Case No. 16-4175
ORAL ARGUMENT REQUESTED

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LYNN D. BECKER,
Plaintiff Counter Defendant Third-Party Defendant-Appellee,

v.

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, UTAH, a federally recognized Indian tribe and federally chartered corporation, et al.,
Defendant Counterclaimants Third-Party Plaintiffs-Appellants,

v.

HONORABLE JUDGE BARRY G. LAWRENCE,
Third-Party Defendant – Appellee.

On appeal from the United States District Court for the District of Utah,
No. 2:16-CV-00958-CW (Honorable Judge Clark Waddoups)

APPELLANTS' REPLY BRIEF

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Appellee's response brief is an insult to the intelligence of this Court and, of less significance, to the intelligence of the Appellant. The response is a frivolously disingenuous discussion of: 1) issues not presented in this appeal; and 2) alleged "rules of law" that are directly contrary to all case law, including the very cases that Appellee cites; and 3) open, obvious, and purposeful misstatement of the facts. This Court deserves better. Appellee does not have any non-frivolous argument that he could have made. If he did have one, he would have made it in his response brief.

There is a small kernel from which Appellee fallaciously attempts to construct an argument: in the Tenth Circuit, a federal court has the authority, applying *Ex Parte Young* by analogy, to enjoin a Tribal Court's officer who takes action which exceeds a federally imposed limitation on Tribal Court jurisdiction. That is the limit of federal jurisdiction under 28 U.S.C. § 1331, and as courts of limited jurisdiction, the federal courts must, of course dismiss when a suit is not within congressionally granted jurisdiction.

Appellee has neither made nor could it make any argument that its claims were within the narrow scope of federal court jurisdiction to enter an anti-tribal-court-suit injunction against a Tribal Court judge.

First, Appellee did not bring any suit against any of the Tribe's judicial officers, and the District Court erred by then entering an injunction directly against

the sovereign Tribe. [1] This is fatal to Appellee's case. The Tribe discussed this in detail in its opening brief, and Appellee provides no argument whatsoever to the contrary. As we all learn when we first encounter *Ex Parte Young*, 209 U.S. 123 (1908), the whole reason for the Supreme Court's creation of the *Ex Parte Young* "fiction" is that suit directly against the sovereign is barred. To protect federal supremacy, the Supreme Court created the *Ex Parte Young* fiction so that a state officer, even if purporting to act in the name of a sovereign, who is violating the United States Constitution or statutes, can be stopped from committing those violations. Even if we apply *Ex Parte Young* by analogy to tribes, that doctrine bars, not authorizes, Appellee's suit against the Tribe and bars the existing injunction against the Tribe.

Second, as the District Court correctly determined, the Tribal Court complaint stated claims which were not barred by any federally imposed limitation on Tribal Court jurisdiction, and this also is fatal to Appellee's case. Unfortunately, instead of confining itself to its limited authority, the District Court, contrary to all precedent, decided that it would enter an anti-suit injunction barring the Trial Court from taking action on a suit which the District Court itself admitted was within the Tribal Court's jurisdiction. The District Court did not articulate any lawful basis for

[1] The Tribe does not appreciate Appellees pejoratively referring to the Tribe as "the Utes."

its anti-suit injunction, and its decision is contrary to multiple independent lines of federal case law - case law which does apply to federal courts in Utah as it applies to federal courts in all other states. The Tribe discussed this in detail in its opening brief, and Appellee has not made and could not make any valid argument to the contrary. The applicable law here is well-settled.

These simple points are not lost on Appellee. The Tribe has briefed them multiple times in this case, and Appellee has never provided any on-point response, because the only good faith on-point response that he could possibly provide is that the Tribe is exactly right. Instead, as he does here, he tries to distract. While this Court should not even need to consider Appellee's various attempted distractions, the Tribe will briefly respond to them in the remainder of this Reply Brief.

I. APPELLEE'S STRAW MAN ARGUMENT THAT THE TRIBAL COURT LACKS JURISDICTION BECAUSE THE "ONLY POSSIBLE BASIS FOR JURISDICTION IS A COMMERCIAL AGREEMENT THAT PROHIBITS SUCH JURISDICTION" IS PATENTLY FRIVOLOUS AND SANCTIONABLE.

A. THERE ARE MULTIPLE OTHER BASES FOR TRIBAL COURT JURISDICTION WHICH ARE CONCLUSIVELY DEEMED TO APPLY UNDER THE CURRENT PROCEDURAL POSTURE, AND WHICH WILL CONTINUE TO BE DEEMED TO APPLY AT LEAST UNTIL APPELLEE HAS EXHAUSTED TRIBAL COURT REMEDIES.

The Tribe, through its Tribal Court Complaint, not the Appellee, through a response brief on appeal, gets to determine which bases the Tribe is alleging for Tribal Court jurisdiction. And as Appellee very well knows, *e.g.*, Resp. Br. at 8, the Tribe alleged multiple grounds for Tribal Court jurisdiction, not one of which was

based upon a claim that the "contract" that Appellee claims to have entered into is a valid contract. The Tribe's complaint is based upon that document being an invalid, unlawful, and void, document--a mere proposed contract.

Any allegation based upon the claimed validity of that illegal document would be by affirmative pleading of Appellee, which, once pled, would lead to the development of the necessary factual record in the Tribal Court and then a Tribal Court decision, based upon the Tribe's Constitution and statues and tribal court interpretation of those laws, regarding whether the contract was validly approved by the Tribe. Under the current posture in the Tribal Court, where the case is still at the preliminary pleading stage, the allegations of the Tribe's complaint are controlling. The document that Appellee claims is a valid contract is currently deemed invalid based upon Appellee's failure to obtain lawful approval of the "contract." When the Tribal Court case moves beyond the initial pleading stage, the Tribal Court would create any necessary factual record and then make a decision, based upon that record, regarding any affirmative defensive allegation that the "contract" was lawfully approved, or any affirmatively pled off-contract claim (e.g. quantum meruit). But, because of Appellee's delaying tactics and the District Court's erroneous anti-suit injunction, the current procedural posture in the Tribe's Court is that: 1) there was a consensual employment agreement between the Tribe and Appellee for on-Reservation employment; and 2) that consensual relationship, and in particular

Appellee's attempt to obtain windfall additional compensation for his already handsomely paid employment was not defined by the illegal void document that Appellee might plead as an affirmative defense in the Tribal Court.

B. THE CONSENSUAL EMPLOYMENT AGREEMENT BETWEEN APPELLEE AND THE TRIBE FOR ON-RESERVATION MANAGEMENT EMPLOYMENT BRINGS THE CASE SQUARELY WITHIN THE SCOPE OF TRIBAL COURT JURISDICTION UNDER THE *MONTANA* RULE.

Succinctly, it is indisputable that Appellee had a consensual on-Reservation employment relationship with the Tribe. The Tribe alleges this in its Tribal Court complaint, and it is, in fact, undisputed. The only thing which might be disputed is whether a portion of that consensual agreement is defined by the document that Appellee claims is a valid contract and that the Tribe, in its Tribal Court complaint, alleges was never lawfully approved and was void *ab initio*. Under any possible reading of the *Montana* line of cases, including Appellee's own reading, Resp. Br. at 14, this provides for Tribal Court jurisdiction. That is a core area where a Tribal Court has jurisdiction under the *Montana* test. *Montana v. United States*, 450 U.S. 544, 565-66 (1981) (holding that tribal courts have subject matter jurisdiction over, *inter alia*, contract disputes between the Tribe and others).

In its Tribal Court complaint, the Tribe alleges that as part of that consensual on-reservation tribal employment relationship, Appellee fraudulently attempted to enter into a contract with the Tribe regarding on-Reservation tribal trust property, that the "contract" was void based upon tribal law and independently, that it was

void based upon federal law. As the Tribe discussed in its opening brief, those claims, the claims pled in the Tribal Court complaint, are indisputably within the Tribal Court's jurisdiction under *Montana*. Notably even Appellee, who does not shy away from frivolous arguments to this Court, does not dispute the Tribe's discussion that under the *Montana* test, the Tribal Court does have jurisdiction over the claims which were actually pled by the Tribe in the complaint in the pending Tribal Court case. Instead Appellee provides an argument with two frivolous premises: 1) that, contrary to the Tribe's Tribal Court complaint, the consensual relationship between the Tribe and Appellee is defined in whole by the alleged "contract" and 2) that the fraudulent and void "contract" that he purportedly entered into with the Tribe waives Tribal Court jurisdiction. The first premise is invalid for the reasons discussed above, and the second is invalid for the reasons discussed in subsection C.

C. APPELLEE LOSES THIS APPEAL BECAUSE HIS ARGUMENT IS WHOLLY DEPENDENT UPON HIS OPEN AND PURPOSEFUL MISSTATEMENT OF THE TERMS OF APPELLEE'S ALLEGED CONTRACT WITH THE TRIBE.

Independent from the issues discussed above, even if Appellee had brought a suit against a tribal officer and even if we assumed, contrary to the required conclusive presumption applicable in the Tribe's Court for a case which is still at the preliminary pleading stage, that the document Appellee calls a contract were validly approved by the Tribe, there would still be no lawful basis for the District Court's

anti-suit injunction against the Tribe, because the Tribal Court would have jurisdiction under that "contract."

Appellee's contrary argument is based upon an open and false assertion to this Court that he negotiated a contract which bars Tribal Court jurisdiction, App. Resp. 6-8, and Appellee's arguments are each wholly dependent on that false assertion. App. Resp. at 10-11 (in his own summary of both of his arguments, and in the first paragraph of his argument, Appellee acknowledges that his arguments are dependent upon his assertion that the contract at issue bars Tribal Court jurisdiction). Appellee plainly did not obtain a contract which bars Tribal Court jurisdiction. Even if the contract were valid (which it is not) it would have provided for Tribal Court jurisdiction, and, perhaps colorably could have been argued to also provide for concurrent state court jurisdiction.

In the proposed contract, the parties acknowledge that, at least absent agreement of the parties to the contrary, the Tribe's Court would be the only court which would have jurisdiction over any claim. They state that Tribal Court jurisdiction would be "required" absent a valid contractual agreement to the contrary. In the purported contract, the parties then provide for jurisdiction in "any court of competent jurisdiction." App. I, 39 art. 23. (emphasis added). That plainly includes the Tribal Court, a court that Appellee, through the purported contract, expressly acknowledged would have jurisdiction.

Contrary to these clear contract terms, Appellee now bases his whole response brief on his claim that the provision in the purported contract providing for jurisdiction in any court of competent jurisdiction excludes the Tribe's Court. He is wrong. "Any Court of competent jurisdiction" plainly includes, not excludes, the Tribe's Court. As is undisputed and as discussed in more detail in the Tribe's opening brief, the activities at issue are based upon on-Reservation management-level employment activities with the Tribe, related to on-reservation tribal trust property. That is why the parties were correct when they recognized that, at least in the absence of agreement to the contrary, the Tribal Court would have exclusive jurisdiction.

One can debate whether Appellee could even have obtained a waiver of Tribal Court subject matter jurisdiction or a consent to State Court subject matter jurisdiction. The Tribe's view is that the parties could not lawfully waive such jurisdiction.[2] But even if Appellee could argue that he negotiated for concurrent

[2] Without any supporting case citation, Appellee asserts that the parties could lawfully confer subject matter jurisdiction on a Utah State Court. The general rule is:

> Because the court's subject matter jurisdiction does not relate to the rights of the parties, parties cannot by their actions confer subject matter jurisdiction on the court if it is lacking, whether by consent, agreement, contract, stipulation, acquiescence, waiver, estoppel, laches, failure to demur or object, appearance, or silence. It does matter whether the

state jurisdiction, that would not be enough for Appellee to prevail in the current appeal. The issue is whether the Tribe's Court has at least concurrent jurisdiction, and even if the contract were valid (which it is not) the parties simply did not bar Tribal Court jurisdiction.[3]

II. APPELLEE'S STRAW MAN ARGUMENT THAT "THE SCOPE OF TRIBAL COURT JURISDICTION IS GOVERNED BY FEDERAL LAW AND 'ARISES UNDER' FEDERAL LAW" IS MEANINGLESS.

In its opening brief, the Tribe carefully set out the governing legal principles regarding federal court jurisdiction over tribes or tribal officers under 28 U.S.C. § 1331. Appellee has no response to that argument, because the Tribe's argument is correct. Having no response, Appellee instead provides a straw man argument in section I of his brief that "the scope of the Tribal Court's jurisdiction is governed by

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> parties' act purporting to confer subject matter jurisdiction is explicit or implicit, if jurisdiction is lacking.

21 C.J.S. Courts § 71; *e.g.*, *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 851 (1986); *Barton v. Barton*, 29 P.3d 13, 16 (Utah App. 2001); *see also Becker v. Ute Indian Tribe*, 770 F. 3d 944 (10th Cir. 2014) (no federal court jurisdiction over Appellee's prior complaint). Because Appellee's assertion, made without supporting legal authority, is immaterial to the current appeal, it is unnecessary to discuss in more detail.

[3] Appellee implies to this Court that the Tribe's federal court suit was caused by Appellee filing a "motion for termination sanctions" in the State Court. Appellee fails to note that its motion for "terminating sanctions" was without merit, and that in fact the State Court judge chastised Appellee, not the Tribe, for Appellee's improper discovery activities.

federal law and 'arises under' federal law, creating Section 1331 jurisdiction." Resp. Br. at 12.

That argument is both immaterial and wrong. It is simply not responsive to the narrower question in this case. As the Tribe itself discussed, 1331 does indeed provide for federal court jurisdiction regarding whether a Tribal Court is exceeding a federally imposed limitation on Tribal Court jurisdiction. But 1331 does so only when the various procedural and substantive prerequisites (discussed in detail in the Tribe's opening brief) have been met. And as the Tribe discussed in its opening brief, those prerequisites are plainly not met in this pending case. Appellee has not exhausted Tribal Court remedies. He has not invoked a waiver of tribal immunity. And he has not provided even a colorable argument that the Tribal Court action exceeds a federally imposed limitation on Tribal Court jurisdiction.

The issue in this matter is not whether there is some theoretical potential for jurisdiction under 1331 at some later date, once the Tribe's Court has created the necessary factual record and made its decisions regarding whether Appellee failed to obtain lawful approval of what he refers to as a contract, and which the Tribe refers to as part of Appellee's unlawful on-Reservation tribal employment-related conduct. The issue is, instead, whether there is jurisdiction under 1331 regarding the specific issue presented here: a pre-exhaustion review, directly against the Tribe and not against a tribal officers, of a Tribal Court claim which even the District Court

admitted came within the scope of Tribal Court jurisdiction. And as the Tribe also discussed in its opening brief and for which Appellee is unable to provide any meaningful response, the Tribal Court case easily fits within the scope of Tribal Court jurisdiction under any arguably imposed federal limits on Tribal Courts.

The mere fact that there can be federal review of a Tribal Court's jurisdiction is insufficient. The question is whether there is such jurisdiction under 1331 in the present factual scenario. And for the reasons the Tribe discussed, and to which Appellee is unable to even muster a response, there is not currently federal jurisdiction under 1331.

III. APPELLEE'S ATTEMPT TO BLAME THE TRIBE FOR HIS OWN LEGAL ERRORS IS WITHOUT MERIT.

In his brief, Appellee feigns, in language which attempts to appeal to stereotypes, that he is the victim of the Tribe. He claims that the Tribe is engaged in "brazen forum shopping" and that the Tribe is somehow the one delaying this matter. Appellee's assertions are 180 degrees wrong.

As discussed above, only the Tribe's Court can resolve the threshold issues in the underlying dispute between the Tribe and Appellee. But in his first attempt to avoid the forum that he must eventually go to, Appellee brought a poorly drafted complaint in the federal court.[4] In his response brief to this Court, Appellee appears

[4] This issue is discussed in detail in Section I of the Tribe's Reply Brief in the related case, case no. 16-4154.

to acknowledge that his federal court complaint was properly dismissed, but he then wrongly and illogically asserts to this Court that the Tribe is somehow responsible for the years of delay caused by Appellee's decision to file a jurisdictionally barred federal court complaint and then his decision to appeal the dismissal of that complaint.

Appellee's newest attempt to avoid the lawful forum is to waste several more years attempting to forum shop into a state court. He is the one seeking to avoid the one forum which would have lawful jurisdiction over all aspects of the dispute—the Tribe's forum—the only forum which can lawfully determine the threshold issue of whether the document that he claims is a valid contract is in fact valid; the same forum in which he entered into a lucrative consensual relationship with the Tribe, in which he performed duties under that consensual relationship, and in which he attempted to enter into a yet more lucrative agreement related to the Tribe's trust assets. That forum was good enough for him when he was being paid handsomely, and his untoward allegations against the Tribe now should fall on deaf ears. This Court is required to conclusively presume under the current facts that the Tribe's Court will give Appellee a fair proceeding. And in fact the Tribe's Court will. The Tribe's Court has jurisdiction and whether the District Court lacked jurisdiction to enjoin that lawful tribal court suit.

IV. APPELLEE'S POLICY ARGUMENT IS DIRECTLY CONTRARY TO THE APPLICABLE FEDERAL COURT POLICIES REGARDING TRIBAL COURT JURISDICTION, STRENGTHENING TRIBAL COURTS, AND PERMITTING TRIBES TO MAKE THEIR OWN LAWS AND BE GOVERNED BY THEM.

On page 16 of his brief, Appellee, as part of an attempt to obtain millions of dollars of tribal funds to which he has absolutely no right, feigns concern for tribes. He asserts if he has to litigate in the Tribe's Court the question of whether he has any valid contract with the Tribe, or has to litigate in the Tribe's Court whether the Tribe owes him money, no one will do business with tribes. There are multiple independent errors in Appellee's policy argument.

First, and simplest, federal court jurisdiction is not created by policy arguments. It is created by congressional statute, and as a court of limited jurisdiction, this Court cannot exercise jurisdiction if there is no such congressional grant of jurisdiction.

Second, Appellee's argument, like all of his arguments, is premised upon his false assertion that what he claims is a contract was validly approved by the Tribe. The facts for current purposes are directly to the contrary. That document was not valid. It was never validly approved by the Tribe, and to be valid Appellee also needed, but failed to obtain, federal approval. The document was also the product of improper actions by Appellee in his role as an on-Reservation tribal management employee.

Third, it is based upon his purposefully false assertion that the document, if valid, would have barred Tribal Court jurisdiction. As discussed above, he negotiated for concurrent jurisdiction, and is now seeking to avoid concurrent jurisdiction. If the document were a valid contract, enforcing its actual terms would be consistent with law and policy. *Cf. Stifel, Nicholouas & Co. v. Lac du Flambeau Band of Lake Superior Chippewa Indians*, 807 F.3d 184 (7th. Cir. 2015) (hereinafter *Stifel*) (the parties did negotiate a contract barring Tribal Court jurisdiction).

Fourth, the actual federal policy is the direct opposite. Numerous others seeking to harm tribes and tribal sovereignty have made similar arguments in the past, and therefore there is already ample case law on this issue. Notably, Appellee does not cite a single case for his argument, and as with most of his arguments, the case law all directly contradicts his argument. As the Tribe discussed in its opening brief, the actual federal policy is that if there is a colorable claim of Tribal Court jurisdiction, a party must exhaust Tribal Court remedies. *Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9, 18 (1987)*; *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856 (1985). After exhaustion the federal courts sit in a status closely analogous to an appellate body for a single issue. *Iowa Mutual Ins. Co.*, 490 U.S. at 18. Bound by the factual record which the parties create in the Tribal Court, *Mustang Prod. Co. v. Harrison*, 94 F.3d 1382 (10th Cir. 1996) (citing *FMC v. Shoshone-Bannock Tribes*, 905 F.2d 1311, 1313 (9th Cir. 1990)), the federal court

determines whether the Tribal Court has exceeded any federally imposed limitation on Tribal Court jurisdiction. *Id.; Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1147-48 (10th Cir. 2011).

Appellee makes one other attempt to evade the exhaustion requirement, asserting that because Appellee has been wasting years litigating in the wrong court system, the Tribe is acting in bad faith. While Appellee's argument is wrong, it is one of the few arguments for which he at least cites a case, *Stifel*, 807 F.3d 184. But, to the limited extent that case is material, it actually supports the Tribe's position, not Appellee's position.

For the most part, *Stifel* is not material. The Chippewa Indians in *Stifel* reside on tribal lands in the state of Wisconsin, and Wisconsin is one of only six "PL 280 states" that have been authorized by Congress to "exercise civil jurisdiction in actions to which Indians are parties" in all areas of "Indian country within the State." 28 U.S.C. § 1360. Secondly, the litigation in *Stifel* related to the Chippewa Indians' off-reservation commercial enterprise—a riverboat casino, hotel and bed and breakfast in Natchez, Mississippi, *Wells Fargo Bank v. Lake of the Torches Econ. Dev. Corp.*, 658 F.3d 684, 688-89 (7th Cir. 2011)—whereas here, the Ute Tribe's dispute with Appellee relates to Appellee's *on-reservation* employment for the Tribe and the Ute Tribe's *on-reservation* oil and gas properties. Both of those distinctions are dispositive. In contrast to the State of Wisconsin, the State of Utah has never

been authorized to "exercise civil jurisdiction in actions to which Indians are parties," and Indian tribes in Utah have never consented to state jurisdiction over their reservations under PL 280. *United States v. Felter*, 752 F.2d 1505, 1508 n.7 (10th Cir. 1985). Further, because the dispute between Appellee and the Ute Tribe arose exclusively within the exterior boundaries of the Tribe's Reservation, the federal barrier under PL-280, 25 U.S. §§ 1322, 1326, means that the Utah state court is prohibited under federal law from exercising jurisdiction over Becker's lawsuit in state court. No analogous barrier under federal law existed in *Stifel*.

Additionally, as discussed in detail above, the Tribal Court suit in the present matter is based upon Appellee's attempt to further his on-Reservation fraudulent activity which grew out of his on-Reservation consensual management employment with the Tribe. In *Stifel*, the Band was challenging whether a contract was valid under federal law. In the present matter, the Tribe makes that challenge but also challenges whether the contract is valid under the tribe's constitution and law. For that issue, the present matter is similar to, but far stronger for the Tribe than *Prescott v. Little Six, Inc.*, 897 F. Supp. 1217, 1222 (D. Minn. 1995) (dismissing for failure to exhaust Tribal Court remedies) and *Prescott v. Little Six, Inc.*, 387 F.3d 753 (8th Cir. 2004), *cert denied*, 544 U.S. 1032 (2005) (post-exhaustion federal court review).

In *Prescott*, several highly compensated tribal management level employees,[5] both Indian and non-Indian claimed that the tribal entity had breached an ERISA plan. The tribal entity disputed that the tribal law requirements for approval of the alleged ERISA plan had been met. Specifically, they noted that the applicable tribal law required that changes to compensation of managers had to be approved by resolution adopted by a valid quorum of Little Six's Board of Directors. When the former tribal managers filed federal court suit, Little Six moved to dismiss for failure to exhaust Tribal Court remedies, and the federal court granted that motion. 897 F. Supp. 1217. That is the issue presented here, and the same result should apply here.

But the subsequent history of *Prescott* further illustrates why dismissal for failure to exhaust was required. ERISA is one of the relatively rare statutes which provides for exclusive federal court jurisdiction. If, as the tribal managers in *Prescott* alleged, the contract was an ERISA contract, the Tribal Court would have had no jurisdiction, and the federal court would have had exclusive jurisdiction. But as the Eighth Circuit held, the question of whether the contract was valid was an issue determined by the Tribe's laws, and therefore requiring the development of the factual record and the decision on the legal issue by the Tribe's Court. 387 F.3d 753. Once that was done, as was required by exhaustion, the Tribal Court's

[5] Little Six, Inc. was a wholly tribally owned tribal law corporation, and was subsequently dissolved and folded back into the Tribe. It therefore was subject to the same treatment as a tribe, and for simplicity will be referred to as a tribal entity.

determinative decision on the existence vel non on the plan was dispositive (the plan did not exist because there was no evidence of a resolution which complied with the tribal law requirements), even though ERISA then would have provided for exclusive federal court jurisdiction if a plan existed.

The present case is far easier than *Prescott*, because, as discussed in detail above, even if the alleged contract had been validly adopted under the Tribe's laws, the Tribal Court would still have at least concurrent jurisdiction over the breach of contract claim—concurrent with any other "court of competent jurisdiction." Exhaustion here was, therefore, plainly required, and the District Court's anti-suit injunction against the Tribe was erroneous

CONCLUSION

The Tribal Court has subject matter jurisdiction over the Tribe's claims related to a contract that a tribal manager entered into on the Reservation for on-Reservation employment. Appellee has no good faith argument to the contrary.

The District Court also erred by dismissing the Tribal Parties' counterclaims and then denying the Tribal Parties' motion to enjoin the unlawful State Court prosecution.[6]

[6] The Tribe discussed this issue in its opening brief. Appellee Becker did not respond. The State did respond, in a brief which duplicates its brief in the related case. To avoid unnecessary duplication, the Tribe responds to that argument and to all other arguments by the State (many of which are inapplicable to the facts of the present case) in its reply in the related case.

For all the reasons stated in the Tribe's opening brief and this reply brief, this Court should revere and remand with instructions to enjoin the State Court and to permit the Tribal Court matter to proceed, so that the parties can obtain the definitive interpretation of whether Appellee's purported contract is void *ab initio* because of his violation of the Ute Constitutional protections of tribal property.

Respectfully submitted this 19th day of December, 2016.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7), because this brief contains 4588 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and 10th Cir. Local Rule 32(b). I relied on my word processor to obtain the count and it is Microsoft Office Word 2013.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2013 in Times New Roman, 14 point font.

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

By: /s/ Jeffrey *S. Rasmussen*
Attorney for Plaintiff/Appellant

CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY REDACTIONS

I hereby certify that a copy of the foregoing **APPELLANTS' REPLY BRIEF**, as submitted in Digital Form via the court's ECF system, is an exact copy of the written document filed with the Clerk and has been scanned for viruses with Webroot, dated 12/19/16, and, according to the program, is free of viruses. In addition, I certify all required privacy redactions have been made.

By: /s/ *Jeffrey Rasmussen*
Jeffrey Rasmussen

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of December 2016, a copy of this **APPELLANTS' REPLY BRIEF** was served via the ECF/NDA system which will send notification of such filing to all parties of record.

By: /s/ *Crystal Hendry*
Assistant to Jeffrey Rasmussen