

JOHN W. HUBER, United States Attorney (#7226)  
JARED C. BENNETT, Assistant United States Attorney (#9097)  
111 South Main Street, #1800  
Salt Lake City, Utah 84111  
Telephone: (801) 524-5682  
Attorneys for the United States of America

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

UINTA VALLEY SHOSHONE TRIBE;  
DORA VAN; RAMONA HARRIS; LEO  
LEBARON & OTHERS WHO ARE IN  
ACTIVE CONCERT WITH THE  
FOREGOING;

Defendants.

Case No. 2:17CV1140TC

**MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

Honorable Tena Campbell

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Under [18 U.S.C. § 1345](#), the United States of America moves this Court for a Temporary Restraining Order (“TRO”) and a preliminary injunction (“PI”). A TRO and a PI are necessary to enjoin the group calling itself the “Uintah Valley Shoshone Tribe” (“UVST”)—which is not a federally recognized Indian tribe—and its officers Dora Van, Ramona Harris, and Leo LeBaron, from selling fraudulent hunting and fishing licenses. Specifically, Defendants and others in active concert with them are carrying out a scheme to sell fictitious hunting licenses and fishing licenses that purportedly allow the holder to take deer, elk, and to fish on land that the United States holds in trust exclusively for the Ute Indian Tribe of the Uintah and Ouray Reservation (“Ute Tribe”). Defendants are using interstate wire communications facilities for the purpose of

carrying out this scheme. Consequently, this Court should temporarily and preliminarily enjoin Defendants and all those in active concert with them from: (1) issuing any hunting and fishing licenses and (2) using the fraudulent hunting and fishing licenses already issued.

#### STATUTORY AND REGULATORY BACKGROUND

In 1861, President Abraham Lincoln authorized the creation of the Uintah Valley Reservation in the Uintah Basin. *Hackford v. Babbit*, 14 F.3d 1457, 1459 (10th Cir. 1994). In 1882, President Chester A. Arthur authorized the creation of the Uncompahgre Reservation. *Id.* at 1459. Later, these reservations became the Uintah and Ouray Reservation. *Id.*

Under the Indian Reorganization Act of 1934, the Uintah, White River, and Uncompahgre Bands of the Ute Tribe reorganized to form the “Ute Tribe of the Uintah and Ouray Reservation”. *Id.* at 1461. Within the Ute Tribe were two groups known as: (1) Full-Bloods and (2) Mixed-Bloods.<sup>1</sup> In 1954, Congress enacted the Ute Partition and Termination Act (“UPTA”), in which it established a procedure to divide tribal assets between the Full-Blood members of the Ute Tribe and the Mixed-Bloods. Pub. L. No. 83-671, § 1; 68 Stat. 868. Under the UPTA, after the divisible assets were allocated between the two groups, the Secretary of the Interior would issue a proclamation terminating the Mixed-Bloods’ status as “Indians” under federal law. *Hackford*, 14 F.3d at 1462. The Secretary issued such a proclamation in 1961, “which declared, ‘[a]ll statutes of the United States which affect Indians shall no longer be applicable [to the mixed-bloods].’” *Id.* at 1463 (quoting Termination of Federal Supervision

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<sup>1</sup> The United States recognizes that the term “Mixed-Bloods” may be offensive in the modern vernacular. However, because UPTA uses this term, this motion will also use it to avoid confusion.

Over the Affairs of the Individual Mixed-Blood Members, 26 Fed. Reg. 8042 (Aug. 24, 1961)). Consequently, the UPTA terminated the Mixed Bloods as a tribal entity and forbade them from ever being able to reapply for recognition as a tribe. 25 C.F.R. § 83.11(g) (2015).

As to those tribal assets that were not divisible, Congress provided that they ““were to remain in government trust and be jointly managed by [the Ute] Tribal Business Committee and the Mixed-Bloods’ representative.”” *Id.* at 1462 (quoting *Ute Distrib. Corp. v. United States*, 938 F.2d 1157, 1159 (10th Cir. 1991)). Hunting and fishing rights are among those assets that were not divisible. *United States v. Felter*, 752 F.2d 1505, 1509 (10th Cir. 1985). Therefore, hunting and fishing rights are held in trust by the United States and are managed exclusively by the Ute Tribal Business Committee and the Mixed-Bloods’ representative.<sup>2</sup> *United States v. VonMurdock*, 132 F.3d 534, 536 (10th Cir. 1997).

The Ute Tribe established a Constitution, which extends the Ute Tribe’s jurisdiction “to the territory within the original confines of the Uintah and Ouray Reservation.” *VonMurdock*, 132 F.3d at 541 (quoting Article I of the Ute Tribe’s Constitution). “The Constitution thus makes clear that the Bands ceased to exist separately outside the Ute Tribe [and] that jurisdiction over what was formerly the territory of the Uintah Band . . . was to be exercised by the Ute Tribe . . . .” *Id.* Consequently, the Ute Tribe has exclusive tribal authority over the Uintah and Ouray Reservation.

As the exclusive tribal authority over the Uintah and Ouray Reservation, the Ute Tribal Business Committee along with the duly authorized Mixed-Blood Representative have enacted

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<sup>2</sup> “[T]he mixed-blood members organized the Affiliated Ute Citizens . . . and empowered its board to act as their authorized representative” with the Ute Tribe. *Hackford*, 14 F.3d at 1462.

by-laws that govern hunting on fishing on the Uintah and Ouray Reservation. [Ute Tribal Code § § 8-1-1 to 8-1-24](#). The Ute Tribal Code vests authority over hunting and fishing in the Ute Tribal Business Committee, the “Ute Indian Fish and Wildlife Department,” and officers working within that Department. *Id.* § 8-1-14. The Ute Tribe has not delegated any of its authority over fish and wildlife to the UVST.<sup>3</sup> In fact, the United States does not recognize the UVST as a tribe, much less as the authority that governs the Uintah and Ouray Reservation or the fish and wildlife within it. Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs, [82 Fed. Reg. 4915 \(Jan. 17, 2017\)](#).

#### FACTUAL BACKGROUND

1. Dora Van is the chairwoman for the UVST and Ramona Harris is the director. Defendants Van and Harris are members of the group’s seven-member council. Leo LeBaron is the director for wildlife of the UVST’s wildlife department. The UVST claims to have approximately 1,865 members. Declaration of United States Fish and Wildlife Service Special Agent Edward D. Meyers (“SA Meyers”) (hereinafter “Exhibit A”) ¶ 16.

2. In late September, 2016, Ute Fish and Wildlife officers and Utah Division of Wildlife Resources officers began receiving information regarding the UVST selling hunting and fishing licenses for their purported members’ use in taking wildlife from Ute Tribal Trust Lands of the Uintah and Ouray Reservation. Ute officers contacted several UVST members hunting or fishing on the reservation in violation of Ute Tribal law. SA Meyers interviewed Dora Van and

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<sup>3</sup> Although Mixed-Bloods who were listed on the rolls of Mixed-Bloods generated under the UPTA retained hunting and fishing rights on the Uintah and Ouray Reservation, [Felter, 752 F.2d at 1509](#), the offspring of those listed Mixed-Bloods did not inherit those rights. [VonMurdock, 132 F.3d at 536](#).

Ramona Harris who said that the UVST has established its own “wildlife department” and sold approximately sixty-eight “licenses” to kill deer and elk on Ute Tribe Trust Lands. Officers documented two deer and one elk killed using these licenses identified at least two additional animals suspected to have been unlawfully taken using the false licenses. Licenses are being produced and issued/sold at the office for the UVST located at 5750 East 1000 North in Ft. Duchesne, Utah. Exhibit A ¶ 17.

3. The application for hunting licenses lists the UVST’s website and email address and states that the UVST is “a Federal Corporation d/b/a the ‘Ute Indian Tribe’ of the Uinta & Ouray Reservations, Utah.” Exhibit A, Ex. 2 at 1 of 4.

4. On or about September 27, 2016, Ute Fish and Wildlife Investigator Lon Hackford (“Investigator Hackford”) received tips from two concerned citizens regarding deer and elk that had been taken on Shoshone hunting licenses. One report indicated that Cole Brackenbury had killed a deer and taken it to C & S Meat Design in Duchesne, Utah. Another report indicated that an elk carcass tagged with a UVST license had been delivered to Chuck’s Meat Inc., in Arcadia, Utah, by Christian Wilkerson. Exhibit A ¶ 18.

5. In furtherance of the investigation, Investigator Hackford reviewed the social networking site Facebook.com and located Facebook profiles for Wilkerson and Brackenbury. Investigator Hackford also noted a profile for Tex Atkins, known to Investigator Hackford to be associated with the UVST, upon which he observed a post containing a photograph of Atkins and a female companion posing with a dead deer. Investigator Hackford later observed a photograph on Facebook of Brackenbury posing with a dead deer. Exhibit A ¶ 19.

6. On October 1, 2016, Utah Division of Wildlife Resources Officer Eric Miller and

Investigator Hackford visited Cole Brackenbury's residence where they observed a deer head with antlers consistent with the one seen in the Facebook photograph, and spoke with Brackenbury's wife, Jenni Brackenbury. Brackenbury was not home, but the officers spoke with him via telephone. Brackenbury admitted to killing the 3x4-point buck mule deer on Ute Tribal Trust Land using a UVST license. Exhibit A ¶ 20.

7. Later on October 1, 2016, Officer Miller and Investigator Hackford visited the Atkins residence. Tex Atkins stated that his minor daughter Demi Atkins killed a deer with Atkins' assistance on Ute Tribal Trust Lands. Atkins stated that his daughter killed the deer using a UVST license. Tex Atkins showed the officers the 3x3 point deer skull with antlers that he had already mounted on a plaque. The officers noted that the deer antlers appeared consistent with those seen in the Facebook photograph. Exhibit A ¶ 21.

8. On October 3, 2016, Investigator Hackford, Ute Fish and Wildlife Officer Sal Wopsock and Officer Miller visited Chuck's Meat Inc. in Arcadia, Utah, to investigate the report of an elk taken using a UVST license. The officers spoke with owner Ryan Harrison. Harrison confirmed that they had received an elk tagged by Christian Wilkerson with a UVST license. Exhibit A ¶ 22.

9. Later on October 3, 2016, Officer Miller, Investigator Hackford and Officer Wopsock interviewed Wilkerson at his residence. Wilkerson stated that he killed a bull elk using a UVST license on Ute Tribal Trust Land, on September 27, 2016. Wilkerson showed the officers his UVST elk permit and stated that he had also purchased a UVST deer permit and a UVST fishing permit. Wilkerson identified the area to the officers on Google Earth. Wilkerson stated that he had purchased the license from the UVST office on Whiterocks Road [Whiterocks

Road is also known as 5750 East]. Wilkerson provided Dora Van's business card and stated that she was the "main lady" for the UVST. Officer Miller informed Wilkerson and his wife that the UVST licenses are not considered valid by the state or federal government. "That's not what the lady selling them is saying," Wilkerson's wife replied. Exhibit A ¶ 23.

10. On October 4, 2016, the Utah Division of Wildlife received a message via electronic mail from "Christian Sun Wilkerson" using the address "theinjaninja@yahoo.com." The letter was also sent to the Bureau of Indian Affairs, the Ute Tribe, and Dora Van at "dvan@uintavalleyshoshonetribe.com." The letter was addressed to "Dora Van, and to whom this may concern." The letter detailed the inquiry made by Officer Miller and the Ute Tribal officer on the previous day. Wilkerson admitted killing an elk with a UVST elk license on Ute Tribal Trust Lands. He stated that he planned to discontinue use of the UVST licenses until he could obtain "paperwork and/or documents" needed to validate the licenses. Exhibit A ¶ 24.

11. On October 5, 2016, Investigator Hackford and Officer Wopsock located a suspected kill site for the Wilkerson bull based on the location description from Wilkerson. They documented the remnants of a gutpile, tire tracks, and other evidence at the kill site. Exhibit A ¶ 25.

12. On October 5, 2016, Investigator Hackford and Ute Tribal Officer Wopsock searched the area described by Atkins and located a suspected kill site for the Atkins deer. They documented two deer legs at the site. Exhibit A ¶ 26.

13. On October 6, 2016, SA Meyers reviewed Facebook and located a Facebook profile for a "Tex Atkins." This Facebook user lists his date of birth as XX/XX/1977. This information matches that of the person (i.e., Tex Atkins) believed to have killed a deer on Ute

tribal trust land. Exhibit A ¶ 27.

14. On October 6, 2016, SA Meyers reviewed Atkin's Facebook profile and noted four photographs of a mounted deer head (posted 09/18/2016), one photograph of a juvenile female [later identified as Atkins's daughter Demi Atkins] holding the deer head (posted 09/13/2016) and one photograph of the same female and Tex Atkins posing with a deer at an apparent kill site (posted 09/13/2016). Exhibit A ¶ 28.

15. On October 6, 2016, SA Meyers also noted a photograph of Atkins in camouflage clothing posing with two Ute Fish and Wildlife officers (posted on 09/24/2016) with the caption, "And that's what it looks like when this guy gets caught and let go." Exhibit A ¶ 29.

16. On October 13, 2016, SA Meyers received a Ute Tribal law enforcement report [F1609-11] detailing a September 24, 2016 contact between Ute Officer Jason Chapoose and Officer Jared Trujillo and Atkins, his wife, his daughter, another juvenile female, Jerry Rasmussen and Briana Broyles. The Ute Officers contacted Atkins and those with him because they were trespassing on Ute Tribal Trust Lands, which resulted in the Ute officers issuing citations to the adult members of the group. Officer Chapoose seized UVST identification cards from the individuals as well as UVST deer and elk licenses from Tex Atkins and a UVST elk permit from Rasmussen. Exhibit A ¶ 30.

17. On October 6, 2016, SA Meyers observed a photograph posted on Facebook by Atkins on September 17, 2016, of an unidentified man [later identified as Jerry Rasmussen by comparing photographs of the unknown man to photographs of Jerry Rasmussen] posing with a dead deer. SA Meyers later interviewed Rasmussen's girlfriend Briana Broyles. Broyles advised SA Meyers that Rasmussen had killed a deer on Ute Tribal Trust Land using a UVST



permit. She showed SA Meyers the meat and head from the deer. Exhibit A ¶ 31.

18. On October 6, 2016, SA Meyers visited the “Uintah Valley Shoshone Tribe” website located at URL [www.uintavalleyshoshonetribe.com](http://www.uintavalleyshoshonetribe.com). The home page for the site listed the following contact information: “Uinta and Ouray Agency, P.O. Box 836, Fort Duchesne, Utah, 84026; Tele: 435-725-5340 Fax: 435-722-3425; E-mail: [dvan@uintahvalleyshoshonetribe.com](mailto:dvan@uintahvalleyshoshonetribe.com).” Exhibit A ¶ 32.

19. On October 13, 2016, Investigator Hackford accessed the Facebook profile of Cole Brackenbury’s wife, Jenni Brackenbury, in SA Meyers’ presence. The officers noted a post containing a photograph of Cole Brackenbury posing with a dead deer. The post was made on October 1, 2016, and was captioned, “Coley got one!!” Exhibit A ¶ 33.

20. On October 11, 2016, at about 1400 hours, SA Meyers and Investigator Hackford visited the suspected Wilkerson elk kill site approximately 1.5 miles northeast of the town of Bluebell, Utah. SA Meyers observed the apparent remains of a large gutpile in a field and vehicle tracks traveling to the site from a nearby oil/gas well pad. Global Positioning System (GPS) land ownership data indicated that the land was Ute Tribal Trust Land. Exhibit A ¶ 34.

21. On October 11, 2016, SA Meyers and Investigator Hackford visited the suspected Atkins deer kill site, about three miles north of the town of Whiterocks, Utah. SA Meyers observed the apparent remnants of a gutpile [rumen contents] at the site. SA Meyers compared the location to the location depicted in the photographs of the Atkins deer from Facebook and found the vegetation, trees, mountains, etc. to be consistent with that seen in the photographs. Global Positioning System (GPS) land ownership data indicated that the land was Ute Tribal Trust Land. Exhibit A ¶ 35.

22. On October 12, 2016, SA Meyers and USFWS SA Jackie Otto visited C & S Meat Design, at 9000 South 11860 West, Duchesne, UT 84021, with UDWR Inv Sean Davis where they interviewed Chet Clayburn concerning the deer processed for Brackenbury. Clayburn confirmed that he had processed a deer for Brackenbury. Clayburn had no record/invoice for the deer. He stated that Brackenbury paid in cash and the work order completed at the time of drop-off was given to Brackenbury with his processed deer meat. The deer was processed on approximately September 27, 2016. Clayburn stated that the deer was tagged with a UVST deer tag. Exhibit A ¶ 36.

23. On October 13, 2016, SA Meyers and SA Otto visited Dora Van's residence and the Uinta Valley Band of the Shoshone office, at 5750 East 1000 North in Ft. Duchesne, Utah, in an attempt to interview Dora Van regarding wildlife licenses being issued by the UVST. No one answered at the residence, so the SA's went to the office adjacent to the residence. Upon arriving at the office, SA Otto and SA Meyers were greeted by a woman later identified as Ramona Harris. SA Meyers asked Harris if they were selling hunting licenses, and if this office was the place to purchase the licenses. Harris replied that she was selling licenses and that the licenses were being issued out of that office. Harris invited the agents into the office and later identified herself as the UVST's "Director." Van arrived several minutes later and agreed to speak with the agents. The following information was received from Van and Harris during the interview (Exhibit A ¶ 37):

a. SA Meyers informed Van and Harris that he wished to discuss the hunting and fishing licenses that they were issuing, Van responded, "We're legal. We are the treaty tribe here." Van explained that there were two area tribes, the Northern Ute Tribe and the UVST.

b. Van made the argument that the Northern Ute Tribe (currently federally recognized as the Ute Tribe) was “under state law,” while the UVST was still “under federal law,” and remains the true heir to Ute reservation lands and beyond, to the Wyoming and Colorado borders within Utah. As such, Van stated that under their constitution (given them “separately” by the federal government), they were “given the right to manage their assets” and therefore they “have the right to issue licenses to [their] people.”

c. Van stated that the UVST was a federally recognized tribe, “doing business as the Ute Indian Tribe. . . .” Van stated that they had a federal ID as a tribe, but that they did not have any business licenses. When asked if the United States Bureau of Indian Affairs (“BIA”) recognized the Uinta Valley Shoshone’s status as a federally recognized tribe, Van responded, “Oh yeah! They do.” She mentioned that they were in the process of setting up the management of their tribal government.

d. When asked about why the UVST had only recently begun to issue hunting and fishing licenses, Van stated that they only recently “found out” that they (the Uinta Valley Shoshone) were the “treaty tribe” and that they needed to “[take] back [their] power and authority here.” Van continued that this meant the “the right to issue and regulate our own fishing and hunting, and anything else on this reservation that falls under our government.”

e. Van stated that this year [2016] was the first year that the UVST had issued hunting licenses. They began issuing licenses within “the last couple months.” SA Meyers asked if fishing licenses had been issued earlier in the summer, and Van confirmed that they had.

f. Van stated that there were seven council members for the UVST, for which she was the Chairwoman.

g. When SA Meyers asked if Van knew that issuing the Shoshone hunting licenses would become contentious, she responded that the UVST was just exercising a right that it “had all along.” Van stated that the tribe had been issuing licenses prior to 1954, as the Ute Tribe. When SA Meyers asked the question again, Van replied, “If the United States government wants to get involved in a legal challenge, they better know who they’re challenging, because their obligation is to us, not to the Utes down here.”

h. When SA Otto asked if there were UVST biologists that determined seasons and managed game animals, Van responded, “No, it’s the tribe that determines that.”

i. When SA Meyers asked how the UVST determines how many licenses to issue, Harris responded that they were issuing licenses “the same as they [Utes] do; we’re using their Proclamation, we’re using their rights that they have because that’s . . . our rights are the same.” She continued that her office issues licenses to its tribal members, while “keeping a running track” and had issued “maybe thirty licenses” to date for deer and elk. Harris stated that each license includes one deer and one elk license with the same license number on each and that they have issued so few licenses because they are not widely advertising the issuance of licenses.

j. Harris confirmed that the licenses were printed by them, with the computer systems in that office. Harris stated that to get a UVST license, a person has to be an enrolled member in the UVST, has to prove that they are a descendant of the tribe, and be on the “tribal rolls.” Van and Harris confirmed that they issue their own tribal identification cards.

k. Harris stated that the UVST was not advertising the sale of hunting and fishing licenses, instead the availability of licenses was made known to others through word-of-mouth.

l. Upon further reflection, Harris corrected herself and stated that she had actually

issued sixty-seven licenses, each valid for one elk and one deer. She mentioned that two individuals had requested deer only licenses, so there were only sixty-five elk licenses issued. Harris stated that they were keeping computer records of the licenses issued, which were “copied off every day” and sent to the UVST’s “wildlife guy.” Van added that this was the “Director for Wildlife” for the UVST. When SA Meyers asked who this was, Harris responded that his name was Leo LeBaron. SA Meyers asked what training, if any, did LeBaron have in wildlife management. Van responded, “What matter does it make?”

m. Van then stated that she knew why the USFWS agents had come to visit, stating that the Utes wanted backing from the federal government “again” in claiming that they were the federally recognized tribe. She continued that the State was not going to get involved and that the local BIA office had been “told to stand down. They’re just here to keep law and order and peace.”

n. Van stated that four of her tribal members had been given citations by the Ute Tribe for trespassing, and that the UVST “basically forced them to put it into the tribal court down here. The tribal court is not a legitimate court.” Van and Harris continued on to discuss the lack of authority of the Ute Tribal judge and the tribal court handling the citations.

o. When asked how many people were enrolled in the UVST, Harris responded that they had 1,865 enrolled members, which was “not even an eighth” of the individuals that would be eligible (but had not officially joined). Van stated that the number of enrolled members was increasing, but they had to “make really, really sure that they are descendants.” Harris stated that they were not open for any person to join, but that “they have to show a lineage back to the 490 who’s our base roll, because that’s the roll of the federal government.”

p. When SA Meyers asked if the UVST had plans to issue small game licenses and licenses for moose or bighorn sheep licenses, Harris referred to those as “limited hunts,” and indicated that they had no plan to issue any, even though she had received interest in small game licenses. Van added, “next year, but not this year. Because, uh, the people actually want to get their meat for the winter. They’re not out hunting for trophies like these guys [i.e., Utes] do down here...we’re not bringing a lot of people in that’s paying big bucks to get a trophy buck, we don’t do that—we’re not going to do that.”

q. Van stated, “We have a deer season and an elk season, and that’s it. They [members] have an opportunity to get their meat for the winter and then it’s off—it’s shut off. After that, it’s poaching.” Harris added, “Next year, they [the Ute Tribe] won’t be hunting here next year.”

r. SA Otto asked if there were penalties for poaching and who a member would call to report poaching, to which Van responded that the UVST has a “law and order code” that they would follow and they have Shoshone fish and game wardens. Harris added that there were eight game wardens, but that the BIA would also be called, and tribal members would be “turned over” to BIA officers. Harris stated that the eight game wardens had to “give an oath to our other members to become tribal officers, tribal wildlife.” Both Harris and Van indicated that the tribal officers were not armed, and had not been to any law enforcement training “this year,” but that they would be attending training in the future. Van stated that she knew the law and that in order for the officers to carry a firearm they have to be “certified.”

s. Van added that if they had more time, they could have requested assistance from other officers from other reservations and BIA to “loan” officers if they were interested in having

armed fish and game officers for this first hunting season. They were not interested having armed game wardens because she believed it set up the possibility for what Harris called “very ugly conflict.”

t. Van stated that Shoshone game wardens are authorized to give verbal warnings for minor violations. Harris confirmed that these game wardens would only have authority over the Shoshone members.

u. Harris stated that the Shoshone deer season ends the 1<sup>st</sup> of November and the elk season ends the 30<sup>th</sup> of October. Van added that the UVST members could “go anywhere they want, within the boundaries of the Uintah and Ouray Reservation,” including the U.S. Forest Service land. SA Meyers asked if the UVST encouraged members to stay on tribal lands, and Van replied, “They know where to hunt . . . we don’t say too much to them. The ones that don’t know are the ones coming in from the outside, that are members but they don’t live on the reservation. They’re the ones you have to, kind of . . . mentor. And we usually send them with people who do know the rules and regulations.” Harris added, “Even the members, if they have any questions, members usually call and say, ‘Hey, can we go here? Can we go there? Can we do this? Can we do that?’ . . . If they don’t have a permit, they know they’re not allowed to hunt.”

v. Harris stated, “When they [Shoshone members] fill their licenses, they have to bring them back here, so we can keep track of the game that’s been taken off of the reservation . . . and when your tags are filled, you’re done.”

w. SA Meyers asked if they knew how many deer and elk had been taken thus far. Harris replied that three elk and four deer had been harvested. Harris stated that by the last day of the deer and elk season, successful or not, the members were required to return their licenses.

Harris conceded that because the tags were due by the end of the season, there could be additional animals harvested that they were not aware of yet.

x. Van stated that the UVST would take more biological data and get “more into the conservation end of it,” eventually.

y. SA Meyers asked if he could have a copy of the Shoshone proclamation (current hunting regulations) that the UVST had been issuing, to which Van and Harris replied that they had run out. SA Meyers then asked if he could have a copy of the list of current licensees. Van and Harris agreed and Harris went into another room to print a list and a copy of their proclamation. SA Meyers subsequently asked for a copy of the licenses that were being issued from that office, which Harris again, agreed to print out.

z. Harris provided a printed copy of the UVST proclamation, the list of licensees and several copies of their license application and examples of licenses.

aa. While looking at the list of licensees, SA Meyers noted that some names were printed in red. Van explained that the names in red were elderly or handicapped, so they would have one of the eight “tribal game wardens” harvest a deer and elk for them. Van stated that this was a common practice for the Ute Tribe as well. Also on the document were the letters “F/R,” which Harris later explained meant the licenses had been “filled and returned”—meaning that the hunter had been successful and the harvest reported to the UVST.

bb. SA Meyers asked if the reason for issuing the UVST hunting licenses was to get the issue of which tribe had historic rights, into federal court, Van responded, “Yes.”

cc. When SA Meyers asked if it was a council decision to begin issuing hunting licenses, Van conversely responded, “No, because we had the right to do that . . . . We just



wanted to go ahead and exercise our right. Now if it turns out that, that is the side effect of our taking our right, then it will bring forward all of the facts of what actual law says . . . in protecting our interests here. So, it wasn't a deliberate thing to do. It's just happening!"

dd. SA Meyers asked if the UVST had discussed wildlife management with any other agencies, to which Van responded that SA Meyers and SA Otto were the first to speak with them regarding wildlife management.

ee. SA Meyers informed Van and Harris that the current position of the State of Utah was that the licenses being issued by the UVST are not valid, and that any wildlife taken under the authority of and tagged with these licenses would be unlawful. Van responded, "The State don't have any say on the reservation. And that is settled law . . . the State has no jurisdiction out here and they cannot regulate – they have no regulatory authority here . . . . Whatever the State says has no bearing on us." SA Meyers continued that because the State of Utah did not recognize the licenses as legal, any wildlife taken under the UVST licenses on private land would be considered illegally taken and possessed, and that the Ute Tribe and USFWS took the same position [for wildlife taken on Ute Tribal Trust Land].

ff. Van stated, "We've got oil wells and everything else out here that we've got to take control of too, and the leases and things, so, if they're griping about the hunting and fishing, wait till we get into the gas, oil and minerals– but if we have to resolve it - this is where we need to resolve it, is in this small a spot. Because whatever happens here is going to apply to everything else [inaudible]. It's all political, I'm telling you," Van said.

24. Later on October 13, 2016, SA Meyers reviewed the list of deer and elk licensees provided by Van and Harris and noted the names of Tex Atkins, Demi Atkins, Cole

Brackenbury, Christian Wilkerson, and Jerry Rasmussen. SA Meyers also noted the name Mark Hackford and the “F/R” notation indicating that Hackford had killed one or more animals with his UVST licenses. Exhibit A ¶ 38.

25. On November 2, 2016, SA Meyers interviewed Van and Harris a second time and received the following information (Exhibit A ¶ 39):

a. Harris stated that the UVST had received “only a couple” complaints via email, from members who had been contacted by the Ute and state officers. Harris confirmed that these individuals were Cole Brackenbury and Tex Atkins.

b. Harris provided SA Meyers with an updated copy of the current hunting proclamation for the UVST. Exhibit A, Ex. 4.

c. Harris said the UVST met in May or June of that year (2016) and discussed, among other things, the decision to implement a wildlife program. Harris recalled that the UVST took a vote of the members that were present at the meeting to determine whether they would begin issuing hunting and fishing licenses.

d. On November 2, 2016, SA Meyers interviewed the UVST’s Wildlife Director Leo LeBaron. SA Meyers asked how LeBaron communicated with Harris and Van, and he replied that he would either call or visit the office. He did state that he also communicated with Harris via email (using Van’s email address [dvan@uintavalleyshoshonetribe.com](mailto:dvan@uintavalleyshoshonetribe.com)).

26. On November 2, 2017, Officers interviewed Johnnie REBER. REBER said he and a group of ten UVST members went fishing in order to “try to get a fishing ticket [citation] . . . to get this settled before the hunting season.” REBER said that the Northern Ute Tribe law enforcement officers would not issue violation notices to the group. REBER was upset with the

officers' decision because he said, "We want to go to court." Specifically, REBER wanted to go to federal court. Exhibit A ¶ 40.

27. On November 2, 2016, officers interviewed Ramona Harris' husband Troy Harris. Troy Harris said the goal of the UVST approach of issuing hunting licenses and the subsequent (federal) enforcement action was to garner federal recognition. Exhibit A ¶ 41.

28. On November 3, 2016, officers interviewed UVST member Joseph Hackford. Hackford said he attended a Shoshone "hunting meeting," held in August 2016 and led by "Dora and Ramona" where he was told the following (Exhibit A ¶ 42):

a. They discussed what to do when confronted by fish and game officers, whether it was state or tribal.

b. They were given Shoshone hunting proclamations and told what they were allowed to hunt.

c. He also said they were asked to volunteer to sign up as "game wardens," stating they were told they did not have arrest authority until they received proper training. The "game wardens" were to help regulate things and if problems occurred to call Bureau of Indian Affairs police.

d. He said they were told they were "recognized" and "could hunt these lands."

e. They were told they could shoot one deer and one elk. When asked about what other species could be hunted, Hackford stated they were told other species would be available in the future.

29. During September and October 2016, SA Meyers was advised by Ute Tribal officers that numerous UVST "No Trespassing" signs had been placed on Ute Tribal Trust

Lands. Exhibit A ¶ 43, Ex. 5 (Photograph of UVST sign).

30. During September and October 2016, SA Meyers was advised by Ute officers that several of the UVST “Game Wardens” were contacted by officers on Ute Tribal Trust Lands and subsequently cited for impersonating an officer. Numerous Shoshone members were contacted on Ute Tribal Trust Lands and cited for trespassing as well. Exhibit A ¶ 44.

31. On November 2, 2016, a federal search warrant was executed at the UVST headquarters. SA Meyers later reviewed the seized evidence and noted the following (Exhibit A ¶ 45):

a. Within a folder labeled “Game Wardens” - A printed email from Ramona Harris (uintaband@yahoo.com) to Leo LABARON (LeBaron3536@yahoo.com) containing a list of game wardens and a current list of deer/elk permittees. Exhibit A, Ex. 6.

b. A UVST member newsletter dated August 14, 2016, summarizing the meeting held on July 30, 2016, to include discussion of establishment of the 2016 hunting season and game warden program. Exhibit A, Ex. 7.

c. Filled/returned deer and elk hunting licenses including the following filled licenses: Mark Hackford (Deer, Elk), Benito Van (Elk), Richard DANIELS (Elk), Justin John Reber (Deer), Dallon Hackford (Deer), Marilyn GRIFFIN (Elk).

d. Emails from Brackenbury, dated October 1, 2016, using the account “Brackenburycole@rocketmail.com” and Christian Wilkerson, dated October 4, 2016, using the account “theinjaninja@yahoo.com” regarding law enforcement contacts. Rocketmail is a webmail service hosted by Yahoo. Exhibit A, Ex. 8.

e. A letter from Dora Van to the Northern Ute Tribe Business Committee, dated

September 1, 2016, with the subject line “Re: Radio Announcement: Ute Tribe Taking Action Against ‘Mixed-blood Group.’” The letter outlines the UVST’s legal status and states in part:

In the interest of the Northern Ute Tribe, I believe it would be prudent to tone-down your rhetoric and foot stomping at the Uinta Shoshone Tribe you call “mixed-bloods” and stop all harassment of the Uinta Tribe members like the fishing incident that occurred on Saturday September 3rd at Bottle Hollow Lake by the Ute Fish and Game that should be shut-down and State/County Police Officers who lack jurisdiction which constitutes an interference with the individual Uinta Shoshone fisherman’s tribal rights, title, and interests on the Uinta Valley and Ouray Reservations. This constraint includes the Utes leaving the “No Trespassing” signs alone that are posted in the hunting areas of the reservations to guide our hunters this season.

Exhibit A, Ex. 9.

32. On September 26, 2017, officers were notified that Shoshone member Kayden Hullinger delivered a deer to Chuck’s Meat in Arcadia, Utah, taken on a 2017 UVST deer permit. An elk was also delivered to Chuck’s Meat on or about the same day by Cole Brackenbury, taken on a 2017 Shoshone elk permit. Exhibit A ¶ 46.

33. On September 28, 2017, SA Otto interviewed Brackenbury and confirmed that Brackenbury had purchased a 2017 UVST elk permit and had used it to kill an elk on Ute Tribal Trust Lands. Brackenbury also stated that members had been using Facebook to communicate regarding the Shoshone hunting program. Exhibit A ¶ 47.

34. On October 2, 2017, officers discovered that Christian Wilkerson had delivered an elk to Chuck’s Meat earlier in the day. The elk was tagged with a 2017 UVST elk permit. Exhibit A ¶ 48.

35. On October 3, 2017, using an undercover Facebook profile, SA Meyers reviewed the closed Facebook group page titled “UVST Events” and observed numerous posts regarding the Shoshone hunting program. SA Meyers noted that the group had 244 members. The

following posts were noted (Exhibit A ¶ 49):

a. A September 28, 2017, post by Cole Brackenbury, “So if you take you elk or deer in to the meat shop dnr will come visit you and they man sure to tell me that we are illegal and they also took my fishing license and my lek tag stub wtf?” SA Meyers noted that as of October 3, 2017, the post and comments had been viewed by 135 of the group’s members. When SA Meyers reviewed the post again on October 13, 2017, he noted that the post had been viewed by 146 of the group’s members. SA Meyers noted that 24 of the members who had viewed the post listed current residences outside of Utah. Exhibit A, Ex. 10.

b. A post made on November 28, 2016, by member Fawn D’Anza notifying members of the new Facebook “community” page “Uinta Valley Shoshone Tribe of Utah.” The post indicated that the page would be used for “all community type functions.” “PLEASE do not post any “confidential” information on the page only here [on the closed group page],” the post stated. Exhibit A, Ex. 11.

c. A post made on November 5, 2016, by Cole Brackenbury, “What is with the state trying to confiscate meat?” Member “Ramona N Troy Harris” replied, “Did you tell them they couldn’t have it.” Numerous other members replied regarding contacts by law enforcement. SA Meyers viewed Ramona N Troy Harris’ profile page and noted that the profile photograph appeared to be a photograph of Ramona Harris. Exhibit A, Ex. 12.

d. A post made on October 22, 2016, by member Terrence Gonzales, “When I was younger my family hunted down in Hill Creek. It has been many years. Do we draw out for elk and other tags with our member numbers? Or, as the tribe whose land we are hunting on do we need a tag? Will we be harassed by the Northern Ute Fish & Game. I’m a member of the

LaRose family.” On October 23, 2016, member “Ramona Christensen Harris” replied, “The hunting seasons for this year will be coming to a close soon, but yes you will have to have a permit. Next year the Wildlife Department will be up and running and you will receive Deer, Elk, and small game licenses for Trust land, we will also be doing the draw, limited and special hunts. NO we will not be harassed by the Northern Ute Fish and Game as to hunting, fishing, gathering or anything else on our TREATY lands next year.” SA Meyers viewed Ramona Christensen Harris’ Facebook profile page and noted the UVST logo as the user’s profile photograph. Exhibit A, Ex. 13.

e. On October 5, 2016, Ramona N Troy Harris made a post requesting donations to assist with legal fees to defend several members who had received trespassing citations from Ute Tribal officers. Exhibit A, Ex. 14.

f. On September 17, 2016, Ramona N Troy Harris posted photographs of Jerry Rasmussen and Tex/Demi Atkins posing with deer with the caption, “Here are a couple of the deer taken this season by our tribal members CONGRATULATIONS on your animals, way to go!!!” Exhibit A, Ex. 15.

g. On July 24, 2016, member Wendy Huber posted a notice of a “Hunting and Fishing Meeting” scheduled for July 30, 2016. Exhibit A, Ex. 15.

h. On July 19, 2016, member Ramona Christensen Harris posted a notice for the upcoming July 30, 2016, “Hunting and Fishing Meeting.” Exhibit A, Ex. 16.

36. On October 3, 2017, SA Meyers reviewed the stated places of residence for all 244 members of the UVST Events group. SA Meyers noted that 45 of the members listed current residences outside of Utah. Exhibit A ¶ 50. Facebook posts and comments made on a

Facebook group page appear on the “News Feed” of the members of that Facebook group for them to view. Exhibit A ¶ 51.

37. On October 3, 2017, SA Meyers reviewed open-source information on the Internet and found no evidence that Facebook has data centers containing servers for their social media networking service within the State of Utah. Exhibit A ¶ 52.

38. On October 5, 2017, SA Meyers reviewed the Terms of Service for Yahoo, which provides email communications services and noted the following statement:

**INTERSTATE NATURE OF COMMUNICATIONS ON YAHOO NETWORK**

When you register with Yahoo, you acknowledge that in using the Yahoo Services to send electronic communications (including but not limited to email, search queries, sending messages to Yahoo Chat or Yahoo Groups, uploading photos and files to Flickr, and other Internet activities), you will be causing communications to be sent through Yahoo's computer networks, portions of which are located in California, Texas, Virginia, and other locations in the United States and portions of which are located abroad. As a result, and also as a result of Yahoo's network architecture and business practices and the nature of electronic communications, even communications that seem to be intrastate in nature can result in the transmission of interstate communications regardless of where you are physically located at the time of transmission. Accordingly, by agreeing to this TOS, you acknowledge that use of the service results in interstate data transmissions.

Exhibit A ¶ 53.



## ARGUMENT

### **I. THIS COURT SHOULD ENJOIN DEFENDANTS AND THOSE IN ACTIVE CONCERT WITH THEM FROM COMMITTING WIRE FRAUD.**

Under [18 U.S.C. § 1345](#), this Court should enjoin Defendants from issuing hunting and fishing licenses and enjoin the use of those that Defendants have already issued because their actions constitute wire fraud. Typically, an injunction may issue if a court finds that the movant has established: (1) the moving party is likely to prevail on the merits of its claims; (2) the moving party will suffer irreparable injury unless the injunction issues; (3) the threatened injury outweighs whatever damage the proposed injunction may cause the opposing party; and (4) the public interest favors the injunction.<sup>4</sup> [Petrella v. Brownback](#), 787 F.3d 1242, 1257 (10th Cir. 2015). However, section 1345 authorizes an injunction under the Federal Rules of Civil Procedure if the United States is able to establish: (1) a person; (2) is violating or about to violate the wire fraud statute, among others; and (3) that an injunction “is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought.” [18 U.S.C. § 1345\(a\)\(1\)](#), (b) (allowing injunction of any offense under chapter 63, which includes wire fraud under [18 U.S.C. § 1343](#)). Under the Federal Rules of Civil Procedure, this Court can enjoin those committing the unlawful conduct and those “who are in active concert” with them. [Fed. R. Civ. P. 65\(d\)\(2\)\(C\)](#).

Courts are divided on the standard of proof required to obtain an injunction for a violation of the wire fraud statute. On one hand, several courts that have addressed the issue

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<sup>4</sup> The elements for a TRO are the same as those for a preliminary injunction. *See, e.g., 3form, Inc. v. Sunset Plaza, LLC*, 2011 WL 4565797, \*4 (D. Utah Sept. 29, 2011) (unpublished).

have found that an injunction under section 1345 is warranted if the United States establishes probable cause to believe that the defendants are currently engaged in a violation of wire fraud, among other statutes. *United States v. Bella Homes, LLC*, 2012 WL 12873501, \*1 (D. Colo. Feb. 12, 2012) (unpublished) (granting Temporary Restraining Order on probable cause of fraud under section 1345); *United States v. Jamie*, 2011 U.S. Dist. LEXIS 4678, \*\*1-2 (S.D. W.Va., Jan. 18, 2011) (granting injunctive relief on probable cause of fraud); *United States v. Hobbs*, 2008 U.S. Dist. LEXIS 88200, \*2 (S.D. Ill. Oct. 31, 2008) (granting injunctive relief on probable cause of fraud); *United States v. Smith*, 502 F.Supp. 2d 852, 854-55 (D. Minn. 2007) (recognizing probable cause standard for injunction under 18 U.S.C. § 1345); *United States v. Payment Processing Ctr., LLC*, 461 F.Supp. 2d 319, 323 (E.D. Pa. 2006); *United States v. William Savran & Assocs.*, 755 F. Supp. 1165, 1177 (E.D.N.Y. 1991); *United States v. Belden*, 714 F.Supp. 42, 45-46 (N.D.N.Y. 1987).

On the other hand, some courts have required the United States to establish a likelihood of success on the merits by a “preponderance of the evidence.” *United States v. Sriram*, 147 F.Supp. 2d 914, 938 (E.D. Ill. 2001); *see also United States v. Brown*, 988 F.2d 658, 660 (6th Cir. 1993) (imposing traditional standards of civil litigation on injunctions under 18 U.S.C. § 1345); *United States v. Hoffman*, 560 F.Supp. 2d 772, 777 (D. Minn. 2008); *United States v. Williams*, 476 F.Supp. 2d 1368, 1374 (M.D. Fla. 2007); *United States v. Lidahl*, 356 F.Supp. 2d 1289, 1290-91 (S.D. Fla. 2005); *United States v. Barnes*, 912 F.Supp. 1187, 1196 (N.D. Iowa 1996); *United States v. Quadro Corp.*, 916 F.Supp. 613, 617 (E.D. Tex. 1996). Some of these courts do not require the United States to show irreparable harm or the other elements for injunctive relief because they are presumed to exist when the United States is able to meet the

requirements of 18 U.S.C. § 1345(a). *See e.g., Quadro Corp.*, 916 F.Supp. at 617. However, other courts cited above, require the United States to establish the four traditional elements of injunctive relief—success on the merits, irreparable injury, the balance of the hardships on the parties, and the public interest—and that fraud has been committed. *Williams*, 476 F.Supp. 2d at 1374 (citing *United States v. Brown*, 988 F.2d 658, 663 (6th Cir. 1993)).

Probable cause is the proper standard for injunctive relief under section 1345 because that is the standard applicable under the detention of mail statute, 39 U.S.C. § 3007, which is the remedy that Congress sought to enhance when it enacted 18 U.S.C. § 1345. *Belden*, 714 F. Supp. at 44-45; *see also United States v. Beamish*, 466 F.2d 804, 806 (3d Cir. 1972) (stating that probable cause standard applies to injunctions sought under 39 U.S.C. § 3007). Imposing a higher standard under § 1345 is incongruous where, as here, Congress sought to provide a better weapon to protect victims of fraudulent schemes during the often lengthy time required to investigate and prosecute the underlying charges. *Belden*, 714 F. Supp. at 45 (“[I]t is unlikely that Congress intended to hold the government to a more stringent standard than that of probable cause when relief under § 1345 was sought, since § 1345 was intended to make it easier for the government to obtain preliminary injunctions as a means of terminating fraudulent schemes during the pendency of criminal investigations than had been possible under 39 U.S.C. § 3007.”).

Although the better-reasoned decisions hold that an injunction under section 1345 should issue upon a showing of probable cause of wire fraud, the Court of Appeals for the Tenth Circuit has yet to opine on which standard applies. Consequently, out of an abundance of caution, the United States establishes below by a preponderance of evidence: (1) that it is likely to succeed on the merits of a wire fraud claim; (2) that Defendants’ wire fraud is causing irreparable harm;

(3) that greater harm will occur if an injunction is not issued than Defendants will suffer if an injunction is issued; and (4) the public interest favors an injunction. Accordingly, this Court should enjoin Defendants and all those in active concern with them, [Fed. R. Civ. P. 65\(d\)\(2\)\(C\)](#), from: (1) issuing hunting and fishing licenses and (2) using hunting and fishing licenses that have already been issued.

A. The United States is Likely to Prevail On its Wire Fraud Claim.

The United States is likely to prevail on the merits of its wire fraud claim against Defendants. To establish a likelihood of success on the merits, the United States need only show “questions going to the merits so serious, substantial, difficult and doubtful, as to make the issues ripe for litigation and deserving of more deliberate investigation.” [Evans v. Utah](#), 21 F. Supp. 3d 1192, 1212 (D. Utah 2014) (quoting [McClendon v. City of Albuquerque](#), 79 F.3d 1014, 1020 (10th Cir. 1996)). Serious questions exist as to whether Defendants have engaged in wire fraud by selling fictitious hunting and fishing licenses to hunt on Ute Tribal Trust Land. To establish wire fraud, the United States must show: “(1) a scheme or artifice to defraud or obtain money by false pretenses, representations or promises; and (2) use of interstate wire communications to facilitate that scheme.” [United States v. Cochran](#), 109 F.3d 660, 664 (10th Cir. 1997). As shown in order below, serious questions as to both elements show that the United States is likely to succeed on the merits of its wire fraud claim.

1. Defendants Have and Continue to Engage in a Scheme to Obtain Money by False Pretenses, Representations, or Promises.

The United States can prove by a preponderance of the evidence that Defendants have engaged in a scheme to obtain money by false representations and promises. “[A] scheme to defraud by false representations may be accomplished by patently false statements or statements

made with a reckless indifference as to their truth or falsity, and deceitful concealment of material facts may constitute actual fraud.” *Id.* at 665. “[E]ven though a defendant may firmly believe in his plan, his belief will not justify baseless or reckless representations.” *Id.* (citations and quotations omitted, alteration in original).

Defendants’ scheme is to sell worthless hunting and fishing licenses, which purportedly allow hunters and anglers to take animals on Ute Tribal Trust Lands. Exhibit A, Ex. 2. This scheme is based entirely on baseless and reckless representations. Regardless of how much Defendants believe that they have the right to issue hunting and fishing licenses for use on the Ute Tribal Trust Lands, the law overwhelmingly shows otherwise. The UVST is not even a federally recognized tribe much less the federally recognized tribe with authority over Ute Tribal Trust Lands. 82 Fed. Reg. 4915. Moreover, the Ute Tribe is the exclusive tribal authority over the trust lands within the Uintah and Ouray Reservation. 68 Stat. 868; *VonMurdock*, 132 F.3d at 540 (“[T]he Jurisdiction of the Ute Indian Tribe of the Uintah and Ouray Reservation shall extend to the territory within the original confines of the Uintah and Ouray Reservation. . . .” (citations and quotations omitted)). Consequently, the Ute Tribe is the only tribal entity that has authority to govern the take of fish and wildlife within its jurisdiction.

Defendants are well aware that the UVST has no recognized legal authority of Ute Tribe lands, but they sell these fake licenses anyway. For example, Defendant Van sent a letter to the Ute Tribal Business Committee stating that the UVST was part of the “Affiliated Ute Citizens.” Exhibit A, Ex. 9 at 5. However, the Affiliated Ute Citizens is the entity that Mixed-Bloods whose Indian status was terminated under UPTA. *Hackford*, 14 F.3d at 1462. Additionally, when SA Meyers interviewed Defendant Ramona Harris and asked how the UVST determines

how many licenses to issue, she responded that they were issuing licenses “the same as they [Utes] do; we’re using their Proclamation, we’re using their rights that they have because that’s . . . our rights are the same.” Exhibit A, ¶ 37(i). For these reasons, Defendants falsely state on their applications for a hunting license that the UVST is “a Federal Corporation d/b/a the ‘Ute Indian Tribe’ of the Uintah & Ouray Reservations, Utah.” Exhibit A, Ex. 2. Defendant Harris also solicited donations from the UVST to help one of their members who were criminally cited for hunting on Ute Tribal land. Exhibit A, Ex. 14. Defendant Van was also aware that four UVST members had been cited for hunting on Ute Tribe lands using the worthless UVST licenses. Exhibit A, ¶ 37(n). Individuals who purchased these fake hunting licenses made Defendants Harris and Van aware that Ute Tribe and State wildlife authorities were questioning the legitimacy of their hunting licenses and threatening prosecution. Exhibit A, Ex. 8. Further, Ute Tribe officers have cited the UVST’s wildlife officers for impersonating law enforcement and for trespass. Exhibit A, ¶ 44. Finally, in October 2016, SA Meyers also informed both Defendants Van and Harris that the hunting licenses they issued for the UVST were not valid. Exhibit A, ¶ 37(gg). Despite knowing that these hunting and fishing licenses were worthless, Defendants are still selling them anyway. This is fraud.

Defendants are selling these licenses by using reckless misrepresentation. For example, Defendant Harris advertised in 2016 that hunting and fishing licenses would be available through the UVST, and that “NO we will not be harassed by the Northern Ute fish and game as to hunting, fishing, gathering, or anything else on our TREATY lands next year.” Exhibit A, Ex. 13 (words in all capital letters in original; underline added). Defendants Van and Harris also told individuals falsehoods about their purported rights with a hunting permit from the UVST. In late

August 2016, Joseph Hackford attended a hunting meeting of the UVST and heard Defendants Van and Harris state that the UVST was a “recognized” tribe under the law and that the UVST hunting licenses were valid. Exhibit A, ¶ 42. Also, the UVST “game wardens” posted “No Trespassing” signs on Ute Tribal Trust Lands to keep Ute Tribe members off of what the UVST believes to be their lands. Exhibit A, ¶¶ 45(e), (f); Ex. 5. These “No Trespassing” signs that the UVST have posted perpetuate the falsehood that the Ute Tribal Trust Lands are really the UVST’s lands. All of these are recklessly false misrepresentations, which induce many to purchase fishing and hunting licenses believing that they are authorized to hunt on property under the Ute Tribe’s jurisdiction. Exhibit A, ¶ 37(u) (stating that Defendant Van tells hunters that the UVST members could “go anywhere they want, within the boundaries of the Uintah and Ouray Reservation”). Thus, under either a probable cause or a preponderance of the evidence standard, the United States is likely to succeed on the merits of the first element of wire fraud.

2. Defendants Use Interstate Wire Communications Facilities to Further Their Fraudulent Scheme.

The United States is also likely to succeed on the merits on its wire fraud claim because Defendants are using interstate wire communications to further their fraudulent scheme. The use of wire communications does not have to be an essential element of the fraudulent scheme. *United States v. Zander*, 794 F.3d 1220, 1226 (10th Cir. 2015) (interpreting mail fraud and wire fraud statutes and noting that because they are “virtually identical, this court has held interpretations § 1341 [the mail fraud statute] are authoritative in interpreting parallel language in § 1343 [the wire fraud statute]”). Instead, “[i]t is sufficient for the [wire communication] to be incident to an essential part of the scheme or a step in the plot.” *Id.* (citations and quotations omitted). Using wire communications to advertise the fraudulent scheme is incident to an

essential part of the fraud. *See, e.g., United States v. Lawrence*, 449 F. App'x 713, 716 (10th Cir. Nov. 29, 2011) (unpublished) (affirming wire fraud conviction for advertising fraudulent scheme on Craig's list). Likewise, both the Supreme Court and the Tenth Circuit have held that a defendant's use of the mail to perpetuate the long-term success of his scheme is an "essential part" of that scheme. *Zander*, 794 F.3d at 1230 (relying on *Schmuck v. United States*, 489 U.S. 705, 711-12 (1989) (holding that scheme required long-term relations with victims and use of the mail furthered essential part of scheme by perpetuating good relationships with fraud victims).

Defendants' use of interstate wire communications have been to advertise their fictitious hunting and fishing licenses and to ensure the long-term success of their scheme. First, in October 2016, Defendant Harris used Facebook to advertise that the UVST would be issuing hunting and fishing licenses next year. Exhibit A, Ex. 13. Second, Defendant Harris used email to communicate with Leo LeBaron, who was the Uinta Valley Shoshone's director of the fish and wildlife department. Exhibit A, Ex. 6. On September 16, 2016, Defendant Van emailed LeBaron the names and permit numbers of the game wardens who would be helping to ensure that holders of the Uinta Valley Shoshone's fake hunting licenses would be able to use the Ute Tribal Trust Land to hunt. Ensuring that holders of the fake licenses are able to use them is essential to the long-term success of Defendants' scheme because if permit holders are precluded from hunting, then licenses will be harder to sell. Therefore, Defendants have used wire communication facilities to further their fraudulent scheme.<sup>5</sup> Accordingly, the United States is likely to succeed on the merits of its wire fraud claim.

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<sup>5</sup> Given that Yahoo has no servers in Utah, emails using that network must cross state lines. Exhibit A, ¶ 38. Similarly, Facebook messages travel interstate given that several members of



B. Defendants' Wire Fraud Scheme is Causing Irreparable Harm.

Although most courts presume irreparable harm once wire fraud is established, the United States can establish irreparable harm without such a presumption. To establish irreparable harm, the United States must show that “a significant risk of harm” exists that cannot be remedied through monetary damages. *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1258 (10th Cir. 2003). Courts have found irreparable harm where a defendant’s actions prevents a property owner from being able to “participate in the everyday operations” of its own property. *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 120-11 (10th Cir. 2009) (finding irreparable harm where plaintiff deprived of use of real property). Indeed, “[m]onetary relief fails to provide adequate compensation for an interest in real property, which by its very nature is considered unique.” *O’Hagan v. United States*, 86 F.3d 776, 783 (8th Cir. 1996). Because of the unique nature of property, “[t]he deprivation of an interest in real property constitutes irreparable harm.” *Opulent Life Church v. City of Holy Springs, Miss.*, 697 F.3d 279, 297 (5th Cir. 2012); *see also Bennet v. Dunn*, 504 F. Supp. 981, 986 (D. Nev. 1980) (“Property is always unique under general principles of the law of equity and its possible loss or destruction usually constitutes irreparable harm.”). Also, “[t]he Tenth Circuit has ‘repeatedly stated that . . . an invasion of tribal sovereignty can constitute irreparable injury.’” *Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah*, 790 F.3d 1000, 1005 (10th Cir. 2015).<sup>6</sup> As shown below, Defendants’

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the UVST’s Facebook page live out of state and receive notice of posts of the UVST’s Facebook page through the “News Feed” feature on Facebook. Exhibit A, ¶¶ 49, 51.

<sup>6</sup> The United States holds in trust the fish and wildlife resources on the Ute Tribe’s land. *Hackford*, 14 F.3d at 1462. Consequently, the United States may protect the rights of the Ute Tribe. *Cramer v. United States*, 261 U.S. 219, 229 (1923) (holding that the United States could “accord protection” to the property rights that the United States holds in trust for a tribe).

fraudulent scheme is irreparable harm because it interferes with the Ute Tribe's property and its ability to govern itself.

First, Defendants' scheme interferes with the Ute Tribe's ability to govern its trust lands. As part of their fraudulent scheme, Defendants have placed their own "No Trespassing" signs on the Ute Tribe's land. Exhibit A, Ex. 5. Aside from directly interfering with the Ute Tribe's property rights, these signs bolster the confidence of hunters who trespass on the Ute Tribe's land to hunt and fish. These deprivations of the Ute Tribe's ability to determine what happens with its trust land is irreparable.

Second, Defendants' fraudulent scheme directly interferes with the Ute Tribe's ability to govern itself by setting up a rival wildlife management system. The Ute Tribe governs the taking of fish and wildlife on its trust lands through its Tribal Business Committee and the Ute Indian Fish and Wildlife Department. Defendants have set up their own fish and wildlife department that purportedly governs the taking of fish and wildlife on the Ute Tribe's trust land. Setting up a rival government that issues its own hunting licenses for the Ute Tribe's trust land is a direct interference with the Ute Tribe's ability to govern itself. Therefore, Defendants' fraudulent scheme is causing irreparable harm, which warrants an injunction.

C. The Injuries Resulting From Defendants' Fraudulent Scheme Will Cause Far More Harm Than an Injunction Precluding the Sale and Use of Fake Hunting and Fishing Permits.

Defendants will suffer far less harm if an injunction is issued than the Ute Tribe will suffer if Defendants' activities are not enjoined. If an injunction is not issued, the Ute Tribe will

continue to suffer from having an unauthorized entity determine what happens on Ute Tribal Trust Lands in addition to dealing with the decisions of a rival government to the Ute Tribe's recognized sovereignty. However, if the Defendants are enjoined, all they will be deprived of is the issuing fake hunting licenses that they are not authorized to issue anyway because Congress specifically terminated the Mixed-Blood's membership in the Ute Tribe under the UPTA. For those hunters and anglers who purchased these fake licenses, they should be able to ask Defendants for a refund. The UVST may have to return money to permit holders, but whatever harm is sustained by giving refunds, such harm is self-inflicted and, therefore, does not outweigh the harm to the Ute Tribe. *Novus Franchising, Inc. v. AZ Glassworks, LLC*, 2013 WL 1110838, \*7 (D. Minn. March 18, 2013) (unpublished) (finding that balance of harms favored injunction because harm to defendant was "self-inflicted"). Therefore, the balance of the harm favors an injunction.

D. The Public Interest Favors Injunctive Relief.

Enjoining Defendants is in the public interest. Currently, those holding these fictitious UVST hunting and fishing licenses are entering tribal lands and, occasionally, interacting with Ute Tribe Fish and Wildlife Department law enforcement officers. Both the hunters and the Ute Tribe Fish and Wildlife Department officers are armed. Where, as here, many hunters with UVST hunting permits have been told that they have a right to hunt, there is a risk of armed conflict between hunters and law enforcement officers when they tell hunters that they have no right to be on Ute Tribal Trust Lands. Additionally, the public interest is furthered by protecting Ute Tribe governance and sovereignty, which is what Congress and executive action has long authorized. Allowing a group that is not a federally-recognized tribe to compete with the Ute

Tribe in governing the Uintah and Ouray Reservation is contrary to the governance and use rights that Ute Tribe members have exclusively been afforded. Consequently, enjoining Defendants' issuance of fake hunting and fishing licenses is in the public interest.

**CONCLUSION**

For the reasons stated above, this Court should enjoin Defendants and those in active concert with them, [Fed. R. Civ. P. 65\(d\)\(2\)\(C\)](#), from issuing any hunting or fishing licenses. Additionally, this Court should enjoin the use of any existing hunting or fishing permit issued by Defendants.

Dated this 18th day of October 2017.

JOHN W. HUBER  
United States Attorney

/s/ Jared C. Bennett  
JARED C. BENNETT  
Assistant United States Attorney