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

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

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. 2:17CV1140BSJ **MOTION FOR SUMMARY JUDGMENT** Honorable Bruce S. Jenkins

Under Fed. R. Civ. P. 56, the United States of America moves for summary judgment on its claim that Defendants have committed wire fraud and, therefore, should be permanently enjoined under 18 U.S.C. § 1345 from selling and issuing hunting and fishing permits for use on federal, state, private, or Tribal Trust Lands for the Ute Indian Tribe of the Uintah and Ouray Reservation ("Ute Tribe"). Because there are no disputed facts, and the United States is entitled to judgment as a matter of law, this Court should grant the United States' Motion for Summary Judgment by finding that Defendants have and are committing wire fraud and, therefore, should be permanently enjoined from continuing to do so.

BACKGROUND

A permanent injunction is necessary to stop the group calling itself the "Uintah Valley Shoshone Tribe" ("UVST") and its officers Dora Van, Ramona Harris, and Leo LeBaron (collectively "Defendants"), from engaging in wire fraud. Specifically, Defendants, and others in active concert with them, are carrying out a scheme to sell fictitious hunting and fishing permits that purportedly allow the permittee to take deer, elk, and to fish on federal, state, private and Ute Tribe lands. Defendants sell permits to hunt deer and elk for $25.00 and sell fishing permits for $5.00 and claim that the permittees can use these permits within the land that UVST claims as its territory. According to Defendants' 2016-2017 "Big Game Proclamation," UVST's territory includes the private, state, federal, and Ute Tribe land. To sell these permits for use on lands over which Defendants have no legal authority, they use false and reckless misstatements. To promote and perpetuate this scheme, Defendants are using interstate wire communications facilities through email and social media. Consequently, this Court should permanently enjoin Defendants and all those in active concert with them from selling and issuing hunting and fishing permits for use on state, federal, or Ute Tribe trust lands.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. 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).

2. In 1882, President Chester A. Arthur authorized the creation of the Uncompahgre Reservation. *Id.* at 1459.

3. Later, the Uintah Valley and Uncompahgre reservations became the Uintah and Ouray Reservation. *Id.*

4. 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.

5. 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.[1] Pub. L. No. 83-671, § 1; 68 Stat. 868.

6. 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.

7. 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 Over the Affairs of the Individual Mixed-Blood Members, 26 Fed. Reg. 8042 (Aug. 24, 1961)).

8. Thereafter, 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).

9. 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."' *Hackford*, 14 F.3d at 1462 (quoting *Ute Distrib. Corp. v. United States*, 938 F.2d 1157, 1159 (10th Cir. 1991)).

[1] 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.

10. Hunting and fishing rights are among those assets that were not divisible, *United States v. Felter*, 752 F.2d 1505, 1509 (10th Cir. 1985), and, therefore, were held in trust by the United States and are managed exclusively by the Ute Tribal Business Committee and the Mixed-Bloods' representative.[2] *United States v. VonMurdock*, 132 F.3d 534, 536 (10th Cir. 1997).

11. The UVST is part of the Affiliated Ute Citizens. (Appendix ("Appx.") 63).[3]

12. The Affiliated Ute Citizens are part of the Mixed Bloods. *Hackford*, 14 F.3d at 1462 (stating that "the mixed-blood members organized the Affiliated Ute Citizens . . . and empowered its board to act as their authorized representative" with the Ute Tribe). .

13. With its congressional recognition, 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).

14. "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.*

[2] 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.

[3] Appendix citations are to the numbers at the bottom right of each page therein.

15. The Ute Tribal Business Committee along with the duly authorized Mixed-Blood Representative have enacted by-laws that govern hunting on fishing on the Uintah and Ouray Reservation. Ute Tribal Code § § 8-1-1 to 8-1-24.

16. 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.

17. The United States does not recognize the UVST as a tribe. Indian Entities Recognized and Eligible to Receiver Services From the United States Bureau of Indian Affairs, 82 Fed. Reg. 4915 (Jan. 17, 2017).

18. Dora Van is the chairwoman for the UVST. (Appx. 4, 11-12, 65).

19. Ramona Harris is the director for the UVST. (Appx. 4, 10).

20. Leo LeBaron is the director for wildlife of the UVST's wildlife department. (Appx. 4, 13).

21. In 2016 and 2017, the UVST, through Ms. Van and Ms. Harris, was selling permits to hunt deer and elk for $25.00. (Appx. 6 (Mr. Wilkerson stating that he purchased a deer and elk permit from UVST); 10 (Ms. Harris admitting to selling hunting permits out of UVST's offices); 22 (Mr. Brackenbury stating that he purchased an elk permit from UVST in 2017); 27 (copy of blank permit application showing deer and elk permit for $25.00); 75-94 (permits from UVST showing that permittees paid $25.00 for elk and deer permits)).

22. The UVST sells replacement deer and elk permits for $10.00 if a permittee has lost his/her hunting permit. (Appx. 41).

23. In 2016 and 2017, the UVST, through Ms. Van and Ms. Harris, was selling lifetime fishing permits for $5.00. (Appx. 27, 76-78, 80-92, 94).

24. The UVST issued a big game proclamation to regulate hunting and fishing during 2016-2017 ("the Proclamation"). (Appx. 35-40).

25. Ms. Harris stated that the UVST was 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." (Appx. 12).

26. The Proclamation defines "Trust Lands" as "lands within the original confines of the Uintah and Ouray Reservation as set forth by Executive Orders of October 3, 1861, and January 5, 1882." (Appx. 38).

27. Today, the "original confines of the Uintah and Ouray Reservation as set forth by Executive Orders of October 3, 1861, and January 5, 1882" includes federal, state, private, and Ute Tribe land. (Appx. 95-96).

28. The Proclamation allows both UVST members and non-members alike to hunt and fish on "trust lands of the Uintah and Ouray Reservation" as long as they have a valid UVST hunting/fishing permit. (Appx. 41, 39-40 (defining "Tribal member" and "Non-Member")).

29. UVST permittees confirmed that they were told by those selling UVST hunting permits that the permittees could hunt the lands referenced in the proclamation. (Appx. 6-7, 20).

30. Ms. Van told United States Fish and Wildlife Service Special Agent Edward Meyers that UVST permittees could "go anywhere they want, within the boundaries of the Uintah and Ouray Reservation," including the U.S. Forest Service land. (Appx. 15).

31. Defendants' hunting and fishing license applications state that the UVST is "a Federal Corporation d/b/a the 'Ute Indian Tribe' of the Uintah & Ouray Reservations, Utah." (Appx. 27).

32. The UVST's hunting permits state that the UVST is "a Federally Recognized Tribe of the Uinta & Ouray Reservations, Utah." (Appx. 28-30).

33. Ms. Van and Ms. Harris told Joseph Hackford at an August 2016 hunting meeting that the UVST was a "recognized" tribe under the law and that the UVST hunting licenses were valid. (Appx. 19-20).

34. The USVT has placed UVST "No Trespassing" signs on land that the United States holds in trust for the Ute Tribe. (Appx. 53).

35. Ms. Van and Ms. Harris use UVST's Yahoo! email to communicate with Mr. LeBaron about the UVST permittees who are authorized to hunt. (Appx. 13, 19, 54).

36. Yahoo! does not have email servers in the State of Utah. (Appx. 25).

37. Mr. LeBaron and other UVST game wardens help to make sure that UVST permittees can use their UVST hunting/fishing permits and, in some cases, assist the UVST permittee in killing the deer/elk. (Appx. 16, 20).

38. Ms. Harris and other UVST members also use Facebook to communicate about the UVST hunting program. (Appx. 66-74).

39. At least 24 subscribers to and recipients of UVST's Facebook posts live outside the State of Utah. (Appx. 22).

40. Ms. Harris advertised on Facebook 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." (Appx. 70) (words in all capital letters in original; underline added).

41. Ms. Harris used Facebook to solicit donations to help pay the attorney fees of UVST members who were criminally cited for hunting on Ute Tribe land with a UVST hunting permit. (Appx. 72).

42. Ms. Van was also aware that four UVST members had been cited for hunting on Ute Tribe lands using the worthless UVST permits. (Appx. 13).

43. Individuals who purchased UVST's hunting permits made Ms. Harris and Ms. Van aware that Ute Tribe and Utah wildlife authorities were questioning the legitimacy of UVST hunting licenses and threatening prosecution. (Appx. 56).

44. Further, Ms. Van, Ms. Harris, and Mr. LeBaron were aware that Ute Tribe officers cited the UVST's wildlife officers for impersonating law enforcement and for trespass. (Appx. 20).

45. In October 2016, a Special Agent for the United States Fish and Wildlife Service also informed both Ms. Van and Ms. Harris that the hunting licenses they issued for the UVST were not valid. (Appx. 17-18).

46. In 2017, Defendants continued selling hunting and fishing permits. (Appx. 19, 22).[4]

[4] Appx. 22 contains references to a 2018 elk permit. This should say 2017 instead of 2018. (Appx. 97).

ARGUMENT

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

This Court should grant the United States' Motion for Summary Judgment because Defendants are committing wire fraud and should be permanently enjoined under 18 U.S.C. § 1345 from selling and issuing hunting and fishing permits for use on state, federal, private, or Ute Tribe lands. Section 1345 authorizes a permanent injunction under the Federal Rules of Civil Procedure where the United States is able to establish that a person is violating or about to violate the wire fraud statute (i.e., 18 U.S.C. § 1343), among others. 18 U.S.C. § 1345(a)(1), (c). To obtain a permanent injunction, the United States must prove: "(1) actual success on the merits; (2) irreparable harm unless the injunction is issued; (3) the threatened injury outweighs the harm that the injunction may cause the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest." *Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818, 822 (10th Cir. 2007) (quotations and citations omitted). As shown in order below, the United States has established each element by a preponderance of the evidence.

A. The United States Has Succeeded on the Merits of its Wire Fraud Claim.

The United States has proven its wire fraud claim against Defendants. 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, the United States has proven both elements by a preponderance of the evidence.

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

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 selling worthless hunting and fishing permits. These permits purportedly allow hunters and anglers to take animals on "lands within the original confines of the Uintah and Ouray Reservation as set forth by Executive Orders of October 3, 1861, and January 5, 1882," which now includes state, federal, and Ute Tribe lands. (Appx. 38, 94-95). This scheme is based entirely on baseless and reckless representations because, regardless of how much Defendants believe that they have the right to issue hunting and fishing licenses for their purported "Trust Lands," the law overwhelmingly shows otherwise. For example, the State of Utah has its own permit system for hunting wildlife and does not recognize the validity of the UVST permits. Utah Code Ann. § § 23-19-1 to 23-19-48. The United States honors the State's permits on federal public land not held in trust for any Indian Tribe. 36 C.F.R. § § 251.50(c), 261.8, 241.1 (2016). The United States does not recognize the UVST as an Indian Tribe, much less as having authority to authorize hunting anywhere. Additionally, the Ute Tribe, pursuant to its well-established sovereignty, has its own wildlife permitting system within the lands that the United States holds in trust. Ute Tribal Code § 8-1-14. 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 UVST has no recognized legal right to regulate hunting on any land, much less that of private parties, the State, the United States, or the Ute Tribe.

Despite clearly having no legal authority to regulate the take of any wild animals on state, federal, private, or Ute Tribe land, Defendants have made material false representations in furtherance of their scheme to sell fake hunting and fishing permits. For example, Defendants falsely state on their hunting and fishing license applications that the UVST is "a Federal Corporation d/b/a the 'Ute Indian Tribe' of the Uintah & Ouray Reservations, Utah." (Appx. 27-30). The UVST is not a "Federal Corporation" given that no act of Congress created it. *Kenai Oil & Gas, Inc. v. Dep't of the Interior*, 522 F.Supp. 521, 523 (D. Utah 1981) (showing that the Ute Indian Tribe is a "federal corporation" because Congress chartered it in 1938). Moreover, the UVST is not doing business as the "Ute Indian Tribe of the Uintah and Ouray Reservations"; it does business as the UVST. Additionally, the UVST's hunting permit contains the misrepresentation that UVST is "a Federally Recognized Tribe of the Uinta & Ouray Reservations, Utah." (Appx. 28-30). Ms. Van and Ms. Harris doubled down on this assertion by telling Joseph Hackford at an August 2016 hunting meeting that the UVST was a "recognized" tribe under the law and that the UVST hunting licenses were valid. (Appx. 19-20). However, the UVST is clearly not a federally recognized tribe. 82 Fed. Reg. 4915. To make matters worse, the USVT has taken its misrepresentations even further by placing UVST "No Trespassing" signs on land that the United States holds in trust for the Ute Tribe. (Appx. 53).

Indeed, the Ute Tribe is the only lawfully recognized tribal authority of those lands. 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)). Furthermore, Ms. 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." (Appx. 70) (words in all capital letters in original; underline added). Therefore, Defendants have engaged in substantial misrepresentations to sell their false fishing and hunting permits.

Worse yet, Defendants are well aware that the UVST lacks legally recognized authority, but they still sell worthless hunting and fishing permits anyway. For example, Ms. Van sent a letter to the Ute Tribal Business Committee stating that the UVST was part of the "Affiliated Ute Citizens." (Appx. 63). 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 Ms. 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." (Appx. 12) (emphasis added). Ms. Harris also solicited donations from the UVST to help one of their members who were criminally cited for hunting on Ute Tribe land. (Appx. 71). Ms. Van was also aware that UVST members had been cited for hunting on Ute Tribe lands using the worthless UVST licenses. (Appx. 13). Individuals who purchased these fake hunting licenses made Ms. Harris and Ms. Van aware that Ute Tribe and State wildlife

authorities were questioning the legitimacy of their hunting licenses and threatening prosecution. (Appx. 56). Further, Ute Tribe officers have cited the UVST's wildlife officers for impersonating law enforcement and for trespass. (Appx. 20). Finally, in October 2016, SA Meyers also informed both Ms. Van and Ms. Harris that the hunting licenses they issued for the UVST were not valid. (Appx. 17). Despite knowing that these hunting and fishing licenses are worthless, Defendants are still selling them anyway. (Appx. 19, 22). This is fraud and should be permanently enjoined.

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

The United States is entitled to summary judgment 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, Ms. Harris used Facebook to advertise that the UVST would be issuing hunting and fishing licenses the following year. (Appx. 70). The UVST also used its Facebook page to advertise the success that its permittees had in obtaining animals on lands on which they had no right to hunt. (Appx. 72).

Second, Ms. Harris used Yahoo! email to communicate with Mr. LeBaron, who was the Uinta Valley Shoshone's director of the fish and wildlife department. (Appx. 54). On September 16, 2016, Ms. Van emailed Mr. 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 Tribe 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 scheme.[5]

The wire communication facilities that Defendants used went interstate. Their Facebook posts were available for the 24 Facebook page members who lived outside of Utah. (Appx. 24). Also, Yahoo! does not have any of its servers in Utah, which means that communications sent

[5] Given that Yahoo has no servers in Utah, emails using that network must cross state lines. (Appx. 24-25). Similarly, Facebook messages travel interstate given that several members of 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. (Appx. 22-24).

using that network must leave Utah. (Appx. 24-25). Accordingly, Defendants used interstate wire facilities to advertise and further their fraudulent scheme, which entitles the United States to summary judgment on its wire fraud claim.[6]

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

Although most courts presume irreparable harm once wire fraud is established,[7] the United States can establish irreparable harm by a preponderance of the evidence 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 his/her 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

[6] Mr. LeBaron is included in the United States' wire fraud claim because he is the UVST's wildlife director, which makes him an officer of UVST and, in any event, in active concert with his co-defendants in perpetuating the wire fraud alleged in the complaint. Under Fed. R. Civ. P. 65(d), he should be included in the permanent injunction.

[7] *See, e.g.*, *United States v. Quadro Corp.*, 916 F.Supp. 613, 617 (E.D. Tex. 1996) (stating that "[t]he government is not required to prove irreparable harm under § 1345" and citing cases so holding).

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).[8] By logical extension, this same deprivation of the United States' sovereignty is also irreparable harm. As shown below, Defendants' fraudulent scheme is irreparable harm because: (1) it interferes with federal and Ute Tribe property, and (2) intrudes upon the sovereignty of each government entity.

First, Defendants' scheme interferes with the United States' and the Ute Tribe's ability to govern their own lands. As part of their fraudulent scheme, Defendants have published in their Proclamation that permittees have the right to hunt on UVST trust lands, which purportedly include "lands within the original confines of the Uintah and Ouray Reservation as set forth by Executive Orders of October 3, 1861, and January 5, 1882." (Appx. 38, 41). This large swath of land includes private, state, federal, and Ute Tribe land. Additionally, Ms. Van has told UVST permittees that they have the ability to hunt on lands managed by the United States Forest Service, which are within UVST's trust lands. (Appx. 15). To further their erroneous point, the UVST has placed their own "No Trespassing" signs on the Ute Tribe's land. (Appx. 53). Aside from directly interfering with the Ute Tribe's property rights, these signs bolster the confidence

[8] 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).

of UVST hunters who trespass on the Ute Tribe's land to hunt and fish. Depriving the federal and tribal sovereigns of their ability to determine who can hunt on their land is irreparable.

Second, Defendants' fraudulent scheme directly interferes with the State's, United States', and the Ute Tribe's ability to govern themselves by setting up a rival wildlife management system. The State of Utah has an established hunting permit system, which the United States recognizes for purposes of hunting on lands managed by the United States Forest Service. 36 C.F.R. § § 251.50(c), 261.8, 241.1 (2016); Utah Code Ann. § § 23-19-1 to 23-19-48. Also, 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. Ute Tribal Code § § 8-1-1 to 8-1-24. By authorizing hunting on "lands within the original confines of the Uintah and Ouray Reservation as set forth by Executive Orders of October 3, 1861, and January 5, 1882," the UVST has established a rival wildlife management system that directly conflicts with the sovereignty of the United States and the Ute Tribe. Setting up a rival government is irreparable harm, in addition to intruding upon property rights, warrants a permanent injunction.

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

Defendants will suffer far less harm if a permanent injunction is issued than the United States and Ute Tribe will suffer if Defendants' activities are not permanently enjoined. If an injunction is not issued, the United States and the Ute Tribe will continue to suffer from having an unauthorized entity determine what happens on federal and Ute Tribe lands in addition to dealing with the decisions of a rival government to the United States' and Ute Tribe's recognized sovereignty. However, if the Defendants are enjoined, all they will be deprived of is issuing fake

hunting licenses. 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 United States and the Ute Tribe. *Novus Franschising, 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 a permanent injunction.

D. The Public Interest Favors a Permanent Injunction.

Enjoining Defendants is in the public interest. Those holding these fictitious UVST hunting and fishing licenses enter federal and tribal lands and, occasionally, interacting with law enforcement officers. Both the hunters and the law enforcement 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 the UVST permits are invalid. Additionally, the public interest is furthered by protecting state, federal, and Ute Tribe governance and sovereignty. Allowing the UVST—which has no legally recognized status—to compete with the State, United States, and Ute Tribe in governing their respective territories is contrary to public interest. Consequently, Defendants' sale and issuance of fake hunting and fishing permits should be enjoined in the public interest.

CONCLUSION

For the reasons stated above, this Court should grant the United States' Motion for Summary Judgment by permanently enjoining Defendants and those in active concert with them from selling and issuing permits to take fish and wildlife.

Dated this 30th day of April 2018.

JOHN W. HUBER
United States Attorney

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