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

<p>LYNN D. BECKER,</p> <p>Plaintiff,</p> <p>vs.</p> <p>UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, <i>et al.</i>,</p> <p>Defendants, Counterclaim and Third-Party Plaintiffs,</p> <p>vs.</p> <p>LYNN D. BECKER, <i>et al.</i>,</p> <p>Counterclaim and Third-Party Defendants.</p>	<p><b>JURRIUS’S OPPOSITION TO UTE INDIAN TRIBE’S MOTION TO RECONSIDER</b></p> <p><b>FILED UNDER SEAL</b></p> <p>Case No. 2:16-cv-958-CW</p> <p>Judge Clark Waddoups</p>
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John P. Jurrius submits this response to the Ute Indian Tribe’s Motion to Reconsider March 31, 2021 Sanctions Order [[Dkt 272](#)]. The Tribe’s arguments are without merit. Mr. Jurrius asks the court to deny the Tribe’s motion to reconsider and to allow

him to supplement his claim for attorney's fees to account for this additional round of briefing.

### **INTRODUCTION**

As the court is aware, the issue before it is retaliation by the Tribe against Mr. Jurrius for his participation as a witness in this case. Mr. Jurrius testified before this court on January 7, 2020. Eight days later, the Tribe's counsel wrote Mr. Jurrius a letter accusing him of having violated the settlement agreement and informing him the Tribe would be initiating arbitration proceedings, which it did on January 27, 2020. Except for specific allegations concerning events that occurred in this case, the allegations in arbitration were general and based solely on information and belief.

When this court asked the Tribe's counsel, "Is the arbitration an attempt to obtain sanctions or damages against Mr. Jurrius for conduct that occurred in this case," Ms. Real Bird evaded the question, asserting confidentiality. The court then asked:

Let me be more specific. Are any of the claims that are being pursued in the arbitration based on the fact that Mr. Jurrius testified in this matter or provided documents pursuant to this Court's order or a subpoena to this Court? Is that in any way part of the arbitration proceeding?

Again, Ms. Real Bird dissembled.

When Mr. Jurrius filed a copy of the Tribe's arbitration claims to refute Ms. Real Bird's evasions, the Tribe characterized the filing as "extraneous" and moved to strike it from the record. ([Dkt. 219](#).) But when the court received those claims, the Tribe's retaliatory intent was plain to see. The court entered its order to show cause, and after providing the Tribe with ample due process, entered its order sanctioning the Tribe for its retaliatory misconduct and its effort to intimidate a key witness in the proceedings before this

court. The court did not accept Mr. Jurrius's request to sanction counsel, even though counsel was clearly complicit in the retaliation and attempted to mislead the court.

Now, having received ample due process, the Tribe asks for a mulligan. It brazenly and falsely asserts that this court attempted to resolve the claims in arbitration. It attempts to sidestep the issue by inaccurately claiming that this court improperly attempted to sanction the Tribe for conduct not affecting this court's jurisdiction. And it tries to change the subject with the transparently inaccurate assertion that the arbitration panel's request for additional briefing establishes that its arbitration claims are "colorable." The subject, however, is retaliation and bad faith. The Tribe's manipulative and malicious intent is not excused by the arbitration panel's decision to afford the Tribe every opportunity to prove something before dismissing the claims in arbitration.

The Tribe's arguments all rest on the fundamental misconception that this court has attempted to control what happens in another jurisdiction. This court's orders, however, were narrowly crafted to protect the integrity of its own process in its own jurisdiction, leaving what happens in the arbitration for decision by the arbitrators.

## **ARGUMENT**

### **I. RULING ON THE CLAIMS IN ARBITRATION.**

The Tribe's first argument is that this court has improperly attempted to rule on the claims in arbitration. The court did no such thing. The court ruled on the issue before the court, which was whether the Tribe and its counsel were guilty of sanctionable conduct, as outlined in the order to show cause.

Without providing this court with supporting documentation, the Tribe attempts to bolster its argument by claiming that Mr. Jurrius "relied on the Court's Order in moving

to summarily dismiss the arbitration.” (Motion, p. 3.) In reality, Mr. Jurrius did not argue that this court had resolved the underlying claims. Instead, Mr. Jurrius asked the arbitration panel to take into consideration this court’s conclusion that the arbitration was retaliatory and brought in bad faith, but to reach its own conclusions:

[REDACTED]

[REDACTED]

[REDACTED]

(Motion for Summary Disposition, April 4, 2021, p. 5 (copy attached as Exhibit A).)

The Tribe completes this first argument with the assertion—also false—that the court attempted to sanction the Tribe for something it did in arbitration. Actually, the court sanctioned the Tribe for its attempt in this court to use the arbitration as a tool of retaliation and witness intimidation. In support of its argument, the Tribe cites *Positive Software Solutions, Inc. v. New Century Mortgage Corp.*, 619 f3d 458 (5th Cir. 2010). That case stands for the proposition that “[a] district court has the inherent authority to impose sanctions ‘in order to control the litigation before it.’” 619 F.3d at 460. The court’s

inherent power extends to actions that threaten the court’s judicial authority or proceedings, but not beyond. *Id.* at 460-61. The case involved an attempt by the district court to sanction an attorney for discovery abuses that had occurred in arbitration. Other than its general support for the court’s inherent power to protect the integrity of its own proceedings, the case is not on point.

This court sanctioned the Tribe for attempting to intimidate and retaliate against a witness in the case before the court. While the arbitration was the tool used in that retaliation, it is not accurate to suggest that this court sanctioned conduct that occurred within the arbitration. This court “controlled the litigation before it” because the Tribe’s retaliation “threaten[ed] the court’s own judicial authority or proceedings.” *Id.*, quoting *FDIC v. Maxxam, Inc.*, 523 F.3d 566, 593 (5th Cir 2008.) The court’s order therefore falls well within the court’s jurisdiction.<sup>1</sup>

## **II. THE TRIBE HAS NO RIGHT TO TAMPER WITH WITNESSES, EVEN IF “COLORABLE” METHODS ARE USED.**

The heart of the Tribe’s argument is that it has “a protected First Amendment right to bring non-frivolous claims.” (Motion, p. 6.) In other words, it asks this court to hold that the First Amendment give the Tribe an unconditional right to use the litigation and

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<sup>1</sup> The Tribe’s other cases say the same thing. *Atchison, Topeka & Santa Fe Ry. Co. v. Hercules Inc.*, 146 F.3d 1071, 1073 (9th Cir. 1998) (“The Federal Rules of Civil Procedure do not authorize dismissal of an entirely separate action for violations in a related action.”); *United States v. Moussaoui*, 483 F.3d 220, 236 (4th Cir. 2007) (“Inherent powers are ‘governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases,’” but courts do not “have an inherent authority to issue orders that facilitate the judicial process taking place in another case in another jurisdiction.”).

arbitration processes to harass and intimidate witnesses. That is obviously not true. *BE&K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 525-26 (2002) (“This line of cases thus establishes that while genuine petitioning is immune from antitrust liability, sham petitioning is not.”); *Protect Our Mountain Env’t, Inc. v. Dist. Ct. In & For Jefferson Cty.*, 677 P.2d 1361, 1366 (Colo. 1984) (“The right to petition government, however, is not without limits. The First Amendment does not grant a license to use the courts for improper purposes.”). Setting aside the question whether the Tribe’s private pursuit of a contractual arbitration remedy constitutes “petitioning” activity or is the product of the Tribe’s contractual waiver of the constitutional right, these cases do not provide the Tribe an unlimited right to retaliate against witnesses, and thus to interfere with the judicial process.

Building its argument on that false foundation, the Tribe asserts that its retaliation should be excused if there was a “colorable” basis for its claims. It ties its argument to an alleged requirement that the basis for punitive sanctions be established by clear and convincing evidence. This court’s sanctions, however, were driven by the Tribe’s improper purpose, and they were compensatory in nature. They were limited to expenses incurred in helping the court identify and remedy the Tribe’s attempt to intimidate a witness.

The Tribe’s arguments ignore its retaliatory purpose in attempting to tamper with a federal court witness, and its own efforts to hide its actions from this court during the August 31, 2020 hearing. The evidence of retaliatory purpose is overwhelming: the timing of the claims, only eight days after Mr. Jurrius testified; the explicit reference to Mr. Jurrius’s document production and testimony in the claims; the attempt by Ms. Real Bird

to hide those facts from this court during the August 31, 2020 hearing; the Tribe's subsequent effort to suppress the information by asking the court to deem Mr. Jurrius's filing of a copy of the Tribe's arbitration claims "extraneous;" and the fact that, except for the two claims arising out of Mr. Jurrius's participation as a witness before this court, the claims in arbitration were all speculative—evidencing a lack of knowledge by the Tribe and its counsel whether the claims had factual merit at all.

This court's evaluation of the merits of the claims was not for the purpose of adjudicating them. Rather, it was for the purpose of testing the Tribe's intent in bringing them. The claims earned the "meritless" label because, as to the claims where facts were recited, the facts clearly did not establish a breach of the settlement agreement, and as to the claims where no facts were given, that absence of factual support—coupled with the court's evaluation of the facts the Tribe eventually described as violations—was sufficient to support the conclusion that the Tribe's purpose was retaliatory and illegitimate. This is true even if in hindsight a claim can be characterized as "colorable."

The Tribe's description of the recent proceedings in arbitration is not accurate. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Similarly, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In defending Claims 1-3 as nevertheless plausible, the Tribe cites this court's own statement that "the fact that an argument or defense lacks merit does not show bad faith as a matter of law." But lack of merit can still be evidence bad faith, and that is exactly how this court approached the issue. The implausibility of the claims, coupled with their timing and the fact that Claims 1 and 2 directly attacked Mr. Jurrius for complying with this court's orders, meant that the lack of merit of these claims did show bad faith.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>2</sup> Even this was not true. [REDACTED]

[REDACTED]



The Settlement Agreement prohibits [REDACTED]

[REDACTED] but the Tribe ignores those distinctions:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Tribe's other factual basis for Claim 4 is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This court may not have had access to all of the information the arbitration panel has, but there can be no doubt the Tribe was on notice that the viability of this claim was an issue in the sanctions process, and it made no effort to defend the claim when given the opportunity to do so.

Claim 5 relates to Mr. Jurrius's attendance at a meeting involving public officials and others at the county government offices in Duchesne. [REDACTED]

[REDACTED]

[REDACTED] Duchesne is the county seat of Duchesne County, Utah. It is a unit of local government that is a body corporate and politic and a legal subdivision of the State of Utah. This court has held, "The City of Duchesne is within the exterior boundaries of the Reservation, but its surface land is not owned by the Tribe."

Restricting a private citizen from traveling on public highways to visit the seat of county government with government officials participating is far beyond the Tribe's jurisdiction, and to the extent the contract is interpreted to impose such a restriction, it is void as a violation of public policy. In its motion, the Tribe cited its constitutional right to petition as potentially excusing its bad-faith allegations in arbitration. While that was a poorly-chosen reliance on the right to petition, it is fair to assert that a contractual provision that prevents a person from petitioning government, by preventing the person from visiting the physical site of government, violates the provision.

The panel's invitation to the Tribe to present its factual basis for these claims does not prevent the court from relying on the Tribe's inability to articulate those facts when it filed the claims as evidence of the Tribe's retaliatory motive and bad faith. [REDACTED]

[REDACTED] when Ms. Real Bird admitted that she knew of no factual basis on August 31, the Tribe couldn't support the claim factually. This is enough to support this court's conclusion that the Tribe's intent was retaliatory, and that the filing was in bad faith. This court was well within the bounds of its discretion in looking at the Tribe's bad faith at the time of filing, not at what it might be able to gin up later.

### **III. THE TRIBE HAS WAIVED ANY RIGHT TO ANY EVIDENTIARY HEARING.**


Finally, the Tribe argues that it was denied due process because it was not given an evidentiary hearing. But the Tribe did not ask for an evidentiary hearing, despite clear notice that the good-faith basis for the arbitration claims was one of the issues this court intended to consider. Its failure to request such a hearing is a waiver.

**CONCLUSION**

For the foregoing reasons, the court should deny the Tribe's motion to reconsider, and should allow Mr. Jurrius to supplement his request for attorney's fees.

DATED: May 12, 2021.

SNOW, CHRISTENSEN & MARTINEAU

By   
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 12, 2021, a true copy of the foregoing JURRIUS'S OP-POSITION TO UTE INDIAN TRIBE'S MOTION TO RECONSIDER was served by the method indicated below, to the following:

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/s/ Rodney R. Parker