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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

UTE INDIAN TRIBE OF THE UINTAH AND OURAY INDIAN RESERVATION, a federally recognized Indian Tribe, Plaintiff, vs. DAVID URE, MICHELLE MCCONKIE, MICHAEL STYLER, SPENCER COX, UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION, Defendants.	**MOTION TO DISMISS THE FIRST AMENDED COMPLAINT AND MEMORANDUM IN SUPPORT** Case No. 2:23-cv-295-DBB-DAO Honorable David Barlow Magistrate Judge Daphne A. Oberg

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The Utah School and Institutional Trust Lands Administration ("SITLA") and Michelle McConkie move to dismiss the Amended Complaint filed by the Ute Indian Tribe of the Uintah and Ouray Indian Reservation ("the Tribe").

SPECIFIC RELIEF SOUGHT AND GROUNDS

The Tribe's Amended Complaint fixes none of the problems in the Original Complaint, and the Tribe ignores outright the Court's prior order dismissing its claims. For many of the same reasons, the Court should dismiss the claims against SITLA and McConkie again.

The Court previously dismissed the non-contract state law claims because the Tribe failed to allege compliance with the notice of claim provision in the Utah Governmental Immunity Act. The Tribe brings those same claims again—breach of trust and fraud—without claiming to have submitted a notice of claim. Likewise, the Tribe brings the same contract and quasi-contract claims the Court previously dismissed without curing any of their deficiencies.

The Tribe's federal claims suffer the same fate. The Court's prior order notwithstanding, the Tribe seems to bring a Title VI claim against SITLA without alleging the Administration receives federal funding. The Tribe also brings various claims under the civil rights statutes against SITLA, despite the Court's holding that the Administration is not a "person" subject to suit under 42 U.S.C. §§ 1981–85.

Which leaves the official capacity claim against McConkie. The Amended Complaint demands that the Court "order specific performance of the sale" of Tabby Mountain because it is "the only adequate remedy here." (Dkt. No. 72 ¶ 198-90.) In its prayer, the Tribe demands "[s]pecific performance of the contract" and a "declaration" that "SITLA is required to sell the

land to the Tribe." (*Id.* at p. 32.) But as courts have held time and again, a federal court cannot order a state to divest its land or specifically perform a contract.

For each of these reasons, the Court should dismiss the claims against SITLA and McConkie.

RELEVANT BACKGROUND

The Court is aware of much of the relevant background from the parties' prior briefing.[1] For that reason, SITLA and McConkie will discuss only those facts necessary to this motion.

The Court Dismissed Most of The Tribe's Original Complaint.

The Tribe filed its Original Complaint in May 2023, alleging the same claims still seen in the Amended Complaint against most of the same parties. Though far from a model of clarity, the Original Complaint appeared to bring claims against SITLA and McConkie for (1) breaches of various post-Civil War civil rights statutes (42 U.S.C. §§ 1981–85), (2) Title VI of the 1964 Civil Rights Act, (3) state law breach of trust, (4) state law fraud, (5) and state law "breach of contract/estoppel/equitable conversion." (Dkt. No. 1 at 19-27.)

The Court dismissed those claims against SITLA and McConkie. Starting with the state law claims, the Court dismissed the "non-breach of contract state law claims" because the Tribe "did not allege compliance with the notice of claim provision" of the Utah Governmental Immunity Act ("UGIA"). (Dkt. No. 52 at 37-38.) The Court dismissed the breach of contract claim because the Original Complaint did not allege a "certificate of sale was issued, let alone a certificate of sale executed by an authorized individual." Both are necessary under SITLA's

[1] To the extent necessary, SITLA and McConkie incorporate by reference the arguments in their prior motion to dismiss. (See Dkt. Nos. 23, 36.) But as explained below, the Court's order provides more than enough reason to dismiss nearly all the Tribe's claims.

regulations to form a contract. (*Id.* at 39.) The Court next dismissed the estoppel claim, because the Original "Complaint avers no facts making it plausible that the Tribe reasonably relied on SITLA's stated proposal to award the Tabby Mountain property to the highest bidder." (*Id.* at 40.) And given the clarity of SITLA's regulations, the Tribe's "mere expectation that SITLA would 'not halt the sale'" could not be "expected to induce action or forbearance." (*Id.* at 40-41.) The Court also dismissed the equitable conversion claim because "no contract was formed." (*Id.* at 41.)

Turning to the federal claims, the Court dismissed the 42 U.S.C. §§ 1981–85 claims against SITLA because the entity "is an arm of the state," and so "it is entitled to claim Eleventh Amendment immunity from suit in federal court." (Dkt. No. 52 at 22.) To the extent the Tribe alleged claims against McConkie in her personal capacity, the Court held those claims did not "meet the pleading standard" for Rule 8. (*Id.*) So too for any claims against McConkie in her official capacity. (*Id.*) For the Title VI claims, the Court dismissed the claim against McConkie because she is not a "public entity" and dismissed the same claim against SITLA because "the Tribe did not allege that" SITLA "received financial assistance within the meaning of Title VI." (*Id.* at 32.)

The Amended Complaint Reads Much Like the Original Complaint.

The Tribe filed its Amended Complaint in January of this year. For SITLA and McConkie, little has changed with the amendment. (*See* Ex. A (redline).) Critically though, the Tribe clarified that McConkie has been sued only "in her official capacity" as the "Director of SITLA." (Dkt. No. 72 ¶11.) Which makes sense. The only other time the Amended Complaint mentions McConkie is to repeat the Original Complaint's allegation that she and SITLA are

"holding the sale in a suspended status, based upon" some undefined "discriminatory intent." (*Id.* ¶ 110, 112.)

Still missing from the Amended Complaint, though, are any new allegations that would let this pleading survive the motion to dismiss stage. On the state law claims, the Tribe still has not alleged that it followed UGIA's notice-of-claim provision. Nor does the Amended Complaint allege any new facts that would let the Tribe bring its contract and quasi-contract claims. On the federal claims, the Amended Complaint ignores the Court's prior decision that because SITLA "is an arm of the state," it "is entitled to claim Eleventh Amendment immunity from suit in federal court." (Dkt. No. 52 at 22.) The Amended Complaint also does not allege that SITLA received any federal funding such that Title VI governs its conduct.

ARGUMENT

To avoid dismissal under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citation and quotation marks omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice"; instead, the plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* And "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Id.*

1. The Court Should Dismiss the State Law Claims Again

For the state law claims, the Amended Complaint is functionally identical to the Original Complaint. The Court can dismiss those claims out of hand.

1.1 Breach of Trust (Count VI) and Fraud and Conspiracy to Commit Fraud (Count VII)

The Court previously dismissed the "non-breach of contract state law claims" because the Tribe "did not allege compliance with the notice of claim provision" in the UGIA. (Dkt. No. 52 at 37-38.) The Amended Complaint again does not allege that the Tribe submitted a timely notice of claim, and the non-contract state law claims therefore should be dismissed for the same reason.

1.2 Breach of Contract/Estoppel/Equitable Conversion (Count VIII)

"The Court previously dismissed the contract-based claims because SITLA's controlling regulations made clear that the sale process could be cancelled at any time for any reason before SITLA issues a certificate of sale." Yet the Original Complaint did not allege a "certificate of sale was issued, let alone a certificate of sale executed by an authorized individual." (Dkt. No. 52 at 39.) The Court dismissed the estoppel claim, because the Original "Complaint avers no facts making it plausible that the Tribe reasonably relied on SITLA's stated proposal to award the Tabby Mountain property to the highest bidder," and the Tribe's "mere expectation that SITLA would 'not halt the sale'" could not be "expected to induce action or forbearance" given SITLA's regulations and instructions (*Id.* at 41.) And the Court dismissed the equitable conversion claim because "no contract was formed." (*Id.*) Once again, the Amended Complaint alleges no new facts to cure any of these pleading defects. (*See* Ex. A.)

2. The Court Should Dismiss the Title VI Claim Again.

To the extent the Tribe does allege a Title VI claim against SITLA and McConkie—the Amended Complaint is unclear on this front—the Court can dismiss that claim in short order. As the Court explained, to state a claim under Title VI, a plaintiff must allege that "the entity

engaging in discrimination is receiving federal assistance." (Dkt. No. 52 at 31 (quoting B*aker v. Bd. of Regents*, 991 F.2d 628, 631 (10th Cir. 1993).) Likewise, "individual employees" of "entities receiving federal funding" are "not liable under Title VI." (*Id.* at 32 (quoting *Webb v. Swensen*, 663 F. App'x 609, 613 (10th Cir. 2016).

Once more, the Amended Complaint still lacks any "allegations regarding SITLA's federal financial assistance." (*Id.* at 32.) And there is no serious argument that Title VI could apply to directors of state agencies. Accordingly, to the extent alleged, the Title VI claim against SITLA and McConkie should be dismissed again.

3. The Court Should Dismiss the Civil Rights Act Claims Against SITLA Again.

The Court can summarily dismiss the 42 U.S.C. §§ 1981–85 (Counts I-V, IX) claims against SITLA because the Administration is not a person subject to suit under those statutes. The Court already considered *Steadfast Insurance Co. v. Agricultural Insurance Co.*, 507 F.3d 1250 (10th Cir. 2007), and held that because "each of the *Steadfast* factors favors a finding that SITLA is an arm of the state, it is entitled to claim Eleventh Amendment immunity from suit in federal court." (*Id.* at 22.) Again, nothing in the Amended Complaint suggests the Court should now reach a different result.

4. The Court Should Dismiss the Official Capacity Claims Against McConkie.

That leaves the Tribe's official capacity claim under the civil rights statutes against McConkie.[2] As the Court explained, "tribes are also subject to the Eleventh Amendment, and

[2] The Amended Complaint alleges that McConkie is being "sued in her official capacity," (Dkt. No. 72 ¶ 11), which should spell the end of any personal capacity or damages claims against McConkie. *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (explaining the difference between the two types of actions). But to the extent the Tribe is also attempting to bring any of the 42 U.S.C. §§ 1981–85 claims against McConkie in her personal capacity, those claims should

any claims they bring against states are barred unless 'they fall within the [*Ex parte Young*] exception . . . for certain suits seeking declaratory and injunctive relief against state officers.'" (Dkt. No. 52 at 12 (quoting *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 269 (1997). That exception turns on the "well recognized irony that an official's unconstitutional conduct constitutes state action under the Fourteenth Amendment but not the Eleventh Amendment." *Id.* (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105 (1984). In short, a claim "for prospective relief against state officials named in their official capacities based upon an ongoing violation of federal law is not considered an action against a state," but state official cannot be "sued in their official capacity for retroactive relief." *Id.* (quoting *Hafer v. Melo,* 502 U.S. 21 (1991). Applying that standard, the Tribe's official capacity claims against McConkie should be dismissed.

The Tribe's Amended Complaint is clear on one issue: the relief it seeks. In Count IX, the Amended Complaint demands that the Court "order specific performance of the sale" of Tabby Mountain," because it is "the only adequate remedy here." (Dkt. No. 72 ¶ 198-90.) In its prayer, the Tribe demands "[s]pecific performance of the contract" and a "declaration to remedy violations of the law, SITLA is required to sell the land to the Tribe." (*Id.* at p. 32.) Those demands for retrospective relief implicate special sovereignty interests that violate Utah's sovereign immunity.

To be sure, in *Ex parte Young*, the Supreme Court recognized a narrow exception to states' sovereign immunity, allowing federal courts to prevent state officials from enforcing laws

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be dismissed again because the Amended Complaint still does not allege McConkie personally harmed or discriminated against the Tribe. (*See* Ex. A.)

that are contrary to federal law. 209 U.S. 123, 159–160 (1908). But *Ex parte Young* does not "permit a federal-court action to proceed in every case where prospective declaratory and injunctive relief is sought." *Coeur d'Alene*, 521 U.S. at 270. What matters is not the "mechanics of captions and pleading," *id.*, but whether "the relief requested is 'properly' characterized as prospective or is indeed the functional equivalent of impermissible retrospective relief." *Hill v. Kemp*, 478 F.3d 1236, 1259 (10th Cir. 2007) (resolving the question at the pleading stage).

Courts routinely determine whether the requested relief is "properly characterized as prospective" or "retrospective" at the motion to dismiss stage. *See, e.g.*, *Coeur d'Alene*, 521 U.S. at 266 (directing dismissal of complaint); *Est. of Schultz v. Brown*, 846 F. App'x 689, 692 (10th Cir. 2021) (affirming dismissal of complaint when "the district court rightly concluded that the Eleventh Amendment precludes [] retrospective remedies.") Which makes good sense, because "a court need only conduct a "straightforward inquiry into whether the *complaint* alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 645 (2002) (cleaned up).

Applying that test, the Supreme Court has held that *Ex parte Young* "cannot be used to obtain" an "order for specific performance of a state's contract." *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 256–57 (2011). Even if such relief "may be labeled equitable in nature," sovereign immunity bars actions seeking "specific performance of a contract to which the State was a party." *Edelman v. Jordan*, 415 U.S. 651, 666–67 (1974) (citing *In re Ayers*, 123 U.S. 443 (1887)). So too for claims that are the "functional equivalent of a quiet title suit" that would "extinguish" a "State's control over a vast reach of lands and water." *Stewart*, 563 U.S. at 257

(quoting *Coeur d'Alene*, 521 U.S. at 282). Those remedies, "which disturb a sovereign title to property," lie "directly against the sovereign even when styled as a claim for injunctive relief against an individual governmental officer." *Jamul Action Comm. v. Simermeyer,* 974 F.3d 984, 995 (9th Cir. 2020).

For that reason, courts have not hesitated to dismiss claims that seek to force a state to sell land. For example, in *Coeur d'Alene*, the Coeur d'Alene Tribe sought "title" and a "declaratory judgment to establish its entitlement to the exclusive use" of "submerged lands banks and beds and submerged lands of Lake Coeur d'Alene." 521 U.S. at 265. The Court found the "*Young* exception inapplicable," because "Idaho's sovereign interest in its lands and waters would be affected in a degree fully as intrusive as almost any conceivable retroactive levy upon funds in its Treasury." *Id.* at 287-88; *see also id.* at 289 (O'Connor, J., concurring) ("A federal court cannot summon a State before it in a private action seeking to divest the State of a property interest.").

Other cases abound. In *Jamul Action Committee*, the Ninth Circuit held that a community organization could not bar a tribe (which has its own sovereign immunity) from building a casino, because doing so would challenge the tribe's "ownership and authority over its land." 974 F.3d at 996; *see also Lacano Invs., LLC v. Balash*, 765 F.3d 1068, 1073–74 (9th Cir. 2014) (dismissing claim when "the benefits of ownership and control would shift from the State to" to plaintiffs). So too in *Ysleta Del Sur Pueblo v. Laney*, 199 F.3d 281, 283 (5th Cir. 2000), where a tribe sought to eject state officials from a piece of real property. The Fifth Circuit explained that *Ex parte Young* could not save the claim, because "the Tribe is asking this court to determine that the State has no title to the Property." 199 F.3d 281, 290 (5th Cir. 2000). And in

West Mohegan Tribe & Nation v. Orange County, the Second Circuit affirmed the dismissal of a tribe's claim that was "fundamentally inconsistent with the State of New York's exercise of fee title over the contested areas." 395 F.3d 18, 23 (2d Cir. 2004).

Courts routinely hold the same when, as here, a plaintiff asks the Court to require a state to specifically perform a contract. For example, in *Waterfront Commission of New York Harbor v. Governor of New Jersey*, the Third Circuit held that federal courts could not compel a state to "abide by the terms of an agreement that it has decided to renounce," because such relief is "tantamount to specific performance would operate against the State itself." 961 F.3d 234, 241 (3d Cir. 2020). As the Eleventh Circuit put it bluntly, it is "well established that *Ex parte Young* does not permit individual officers of a sovereign to be sued when the relief requested would, in effect, require the sovereign's specific performance of a contract." *Tamiami Partners ex rel. Tamiami Dev. Corp. v. Miccosukee Tribe of Indians of Fla.*, 177 F.3d 1212, 1226 (11th Cir. 1999); *see also Ad Hoc Comm. on Jud. Admin. v. Com. of Mass.*, 488 F.2d 1241, 1243 (1st Cir. 1973) (prohibiting "an injunction ordering specific performance of a state's contract").

Finally, the Tribe also requests a declaration that "SITLA's decision not to sell the land to the Tribe for $46,976,000 was based upon unlawful discrimination by the Defendants." (Dkt. No. 72 at p. 32.) The only purpose of "the award of a declaratory judgment" in a dispute about a state actor's "past action" would be to allow a plaintiff to offer the judgment "in state-court proceedings as res judicata on the issue of liability." *Green v. Mansour*, 474 U.S. 64, 73 (1985). For that reason, "the issuance of a declaratory judgment in these circumstances would have much the same effect as a full-fledged award of damages or restitution," the "latter kinds of relief being of course prohibited by the Eleventh Amendment." *Id.* And so "*Young* has been focused on cases

in which a violation of federal law by a state official is ongoing as opposed to cases in which federal law has been violated at one time or over a period of time in the past." *Papasan v. Allain*, 478 U.S. 265, 277–78 (1986).

In the end, the Tribe's requested relief against McConkie falls outside *Ex parte Young*'s narrow sovereign immunity exception for two independent reasons. The Tribe asks not only for "specific performance" against the State as restitution for an alleged prior wrong, but the Tribe also insists that SITLA dispose of a "vast reach of lands and water." *Stewart*, 563 U.S. at 257. Accordingly, the official capacity claims against McConkie should be dismissed.

CONCLUSION

For all these reasons, the Tribe's causes of action against SITLA and McConkie should be dismissed.

DATED this 24th day of March 2025.

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