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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UTE INDIAN TRIBE OF THE UINTAH AND OURAY INDIAN RESERVATION, a federally recognized Indian Tribe, Plaintiff, v. DAVID URE, MICHELLE MCCONKIE, MICHAEL STYLER, SPENCER COX, UTAH SCHOOL and INSTITUTIONAL TRUST LANDS ADMINISTRATION Defendants.	**RESPONSE IN OPPOSITION TO DEFENDANT DAVID URE'S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT** Civil Case No. 2:23-CV-00295 Jude David B. Barlow Magistrate Judge Daphne A. Oberg

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INTRODUCTION

As this Court recognized during the November 18, 2024, hearing in this case, the foundation of Plaintiff Ute Indian Tribe of the Uintah and Ouray Reservation's ("Tribe") claims against Defendants "involves a wide-ranging conspiracy of [Utah] state employees to deprive the [Ute Indian Tribe] of the right to purchase Tabby Mountain . . . ." Transcript at 6 (attached hereto as Exhibit 1). Indeed, since early 2019 – and continuing to this day -- the Utah School and Institutional Trust Lands Administration (SITLA), Utah Department of Natural Resources (DNR), officers of each, and the political branches in the State of Utah have been engaged in an ongoing conspiracy to discriminatorily prevent the Tribe from purchasing a parcel of land within the Tribe's own Reservation, known as Tabby Mountain. This suit seeks to remedy these ongoing violations of state and federal statutory and constitutional laws.

Early in 2018, SITLA's Board unanimously determined that it was in the best interest of SITLA and its trust beneficiaries, which are Utah public school students, to sell the portions of the surface estate in Tabby Mountain which SITLA owned. But when the Tribe was the high bidder for that property, the State Executive Branch, SITLA, DNR, and their officers worked in secret to 1) prevent the sale of Tabby Mountain to the Tribe, and 2) intentionally concoct a false public record through which they, knowingly falsely, misled the Tribe and SITLA's trust beneficiaries by claiming that they were "suspending" the sale to address two (pretextual) non-discriminatory concerns.

Based upon information brought to light by a state whistleblower, they were caught.

On May 5, 2023, the Tribe filed its Complaint, and all Defendants subsequently filed motions to dismiss. On June 14, 2024, this Court entered its Memorandum Decision and Order Granting in Part and Denying in Part Defendants' Motions to Dismiss [Dkt. 52]. After Defendants

filed a Joint Motion for Clarification of the Court's Order [Dkt. 53], on November 18, 2024, the Court held a hearing on that motion. At no point in Defendants' briefing or at oral argument did counsel urge that the Court's order could be read to dismiss claims against Defendant Ure – and for good reason. As to the Tribe's claims against Defendant Ure, the Court clearly stated that the Tribe, in its Complaint, stated a claim against Defendant Ure for conspiracy pursuant to 42 USC § 1985.

The Tribe's Amended Complaint

Contrary to Defendant Ure's arguments in his motion to dismiss the Amended Complaint, the Tribe did not "scrub" any federal constitutional references. Rather, as set forth herein, in response and in deference to the Court's requests for certain clarifications on what claims the Tribe is bringing against which Defendants, the Tribe set forth its specific claims with reference to the particular federal statutes which protect discrete constitutional rights to equal protection and due process. To be clear, the Tribe does not concede or remove *any* claims from its Amended Complaint, but instead clarifies which claims it brings against which of the many Defendants involved in the conspiracy.

In this regard, the Tribe reminds Defendants that there is precedent supporting the proposition that an amended complaint supersedes and voids a formerly filed original complaint. *United States v. Pansier*, 666 B.R. 198, 201 (E.D. Wis. 2024) In fact, Defendant Ure himself cited to cases standing for that proposition. Dkt. 77 at 12 Accordingly, out of an abundance of caution and in order to preserve issues for any necessary appeal, the Tribe is not abandoning any claims that it brought in its original complaint. Beyond this, however, one thing remains clear – the Court did not dismiss the claims the Tribe has brought against Defendant Ure, who is a central actor in the illegal conspiracy that deprived the Tribe of the right to purchase Tabby Mountain.

As a point of procedure, and in the interest of judicial economy, the Tribe herein responds only

to the arguments Defendant Ure brings in his motion to dismiss the Amended Complaint and hereby incorporates by reference its opposition to the arguments Defendant Ure previously raised in his earlier motion to dismiss the original Complaint. [Dkt. 38]. Related, despite complaining that the Tribe does not make many changes from its original Complaint, Defendant Ure now for the first time raises the affirmative defense of qualified immunity on the basis that the Tribe cannot show that Defendant Ure violated any clearly established right. Like his claims that he is not a "person" for the purpose of an "official capacity" suit, he is not entitled to qualified immunity in his individual capacity. In fact, as the director of SITLA during the origin and continuation of the conspiracy (which continues today), Defendant Ure's individual actions as well as actions he took in concert with others constitutes classic – even "textbook" – discrimination against the Tribe in violation of federal law.

ARGUMENT

I. Defendant Ure in his official capacity is a "person" for purposes of the Tribe's federal claims brought pursuant to 42 U.S.C. § 1981, § 1982, § 1983, and § 1985.

Defendant Ure, relying on inapposite federal case law, claims that "all official capacity claims against him should be dismissed since his official capacity is not a person under 42 U.S.C. 1983" Dkt. 77 at 5. But this is an incomplete – and misleading – statement of the law. An accurate statement of the law would be, "[A] state actor sued in their official capacity is not considered a "person" for purposes of Section 1983 **when the suit seeks monetary damages**." But where the Tribe is seeking prospective injunctive relief, this line of cases is irrelevant to the issue before the Court.

Of course, state officials sued in their official capacities for prospective injunctive relief, are considered "persons" under Section 1983. *Ex Parte Young*, 209 U.S. 123, 144 (1908). Indeed, for purposes of the *Ex Parte Young* analysis, that Defendant Ure no longer holds the position of Director of SITLA is of no moment. It is well settled that an official capacity suit can be brought against

someone who is no longer in office if the real party in interest is the government entity, not the named official. *Hafer v. Melo*, 502 U.S. 21, 25 (1991). Therefore, a successful official capacity suit will result in a remedy that attaches to the official's seat rather than to the individual, making the judgment effective whether or not the official is in office. *Attwood v. Clemons*, 526 F. Supp. 3d 1152, 1162 (N.D. Fla. 2021). This principle is codified in Federal Rule of Civil Procedure 25(d), which states that an action does not abate when a public officer ceases to hold office while the action is pending; the officer's successor is automatically substituted as a party. Fed. R. Civ. P. 25. Here, Defendant Ure, as the previous director of SITLA, is a proper defendant in his official capacity.

Moreover, because Ure is a "person" in his official capacity for purposes of 42 U.S.C. § 1983, he is also a "person" for purposes of Sections 1981, 1982, and 1985. Even Defendant Ure agrees that the meaning of a "person" within Section 1983 is the same for purposes of Sections 1981, 1982, and 1985. Doc 77 at 15. And even Defendant Ure admits that Section 1983 is a federal cause of action for damages to vindicate alleged violations of federal law committed by individuals acting "under color of state law." *Id*. at 14. *See also Wyatt v. Cole*, 504 U.S. 158, 161 (1992) ("[T]he purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails."); *Owen v. City of Independence*, 445 U.S. 622, 650 (1980) (Stating § 1983 was designed "to provide protection to those persons wronged by the '[m]isuse of power.'") Therefore, "the only proper defendants in a Section 1983 claim are those who 'represent [the state] in some capacity, whether they act in accordance with their authority or misuse it.'" *Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442, 1447 (10th Cir. 1995). It is undisputed that when the instant conspiracy against the Tribe began, Defendant Ure was the Director of SITLA and represented the State in that capacity. Accordingly, he is a proper defendant in this lawsuit.

II. Defendant Ure in his individual capacity is not entitled to qualified immunity on any federal claim.

As a preliminary matter, the defense of qualified immunity does not apply to state actors in a Section 1983 suit where the remedy sought is injunctive relief rather than damages. For this reason, to the extent the Tribe seeks injunctive relief, Defendant Ure's "defense" of qualified immunity is irrelevant. *See Stidham v. Peace Officer Standards and Training*, 265 F.3d 1144 (2001).

Beyond this, qualified immunity "shields public officials from damages[1] actions unless their conduct was unreasonable in light of clearly established law." *Booker v. Gomez,* 745 F.3d 405, 411 (10th Cir. 2014). According to the Supreme Court, the defense protects "all but the plainly incompetent or those **who knowingly violate the law."** *Ashcroft v. Al-Kidd*, 563 U.S. 731, 743 (2011) (emphasis added). In other words, qualified immunity provides individual state actors an affirmative defense, provided that the official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. As set forth below, the Tribe has clearly pled that Defendant Ure knowingly violated the Tribe's constitutional rights when he set in motion the conspiracy to deprive the Tribe from the opportunity to purchase Tabby Mountain, as any other high bidder would have been able to do. For Defendant Ure to even suggest he was not aware of the long-established right of the Tribe to be free from discrimination under federal law in matters of contracting and property rights approaches the frivolous.

A. Defendant Ure ignores the clear distinction between the pleading standard in federal constitutional claims involving invidious discrimination and the evidentiary standard applicable to such claims.

In the jurisprudence surrounding claims of invidious discrimination, a court asks whether the challenged state action intentionally discriminates between groups of persons, understanding that

'intentional discrimination can take several forms.'" *SECYS, LLC v. Vigil*, 666 F.3d 678, 685 (10th Cir. 2012). One such form is when generally applicable laws initially enacted with entirely proper (non-discriminatory) purposes themselves later become tools of intentional discrimination in the course of their enforcement. In the paradigmatic example of this line of cases, the Court faced a law barring the operation of commercial laundries in wood buildings without a permit. *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886). This generally applicable law would have been perfectly unobjectionable (an attempt to control the fires that plagued San Francisco in the nineteenth century), bur for the fact that all two hundred Chinese operators were denied a permit while seventy-nine out of eighty white operators received authorization." *Id.*

Because apparently neutral or legitimate but ultimately pretextual explanation is so often utilized by those who commit discriminatory acts, civil rights plaintiffs are permitted to and often do use circumstantial evidence to prove invidious discrimination. As the Supreme Court of the United States stated in 1977:

> Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent **as may be available**. . . . Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face. The evidentiary inquiry is then relatively easy. But such cases are rare. Absent a pattern as stark as that in *Gomillion* or *Yick Wo*, impact alone is not determinative, and the Court must look to other evidence.

Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266 (1977) (Emphasis added.). Federal Rule of Civil Procedure 8(a)(2) requires that the complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8. To survive a motion to dismiss and "unlock the doors of discovery",

> A complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial

> plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged . . .
>
> When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009) (internal citations and quotations omitted).

In *Ashcroft*, the plaintiff brought a Bivens action –the "federal analog to suits brought against state officials under Rev. Stat. § 1979, 42 U.S.C. § 1983." *Id*. at 675 (internal citations and quotations omitted). As such, its analytical lens is particularly helpful here. After the Court identified the applicable elements for a claim of unlawful discrimination, it analyzed whether the plaintiff "nudged [his] claims of invidious discrimination across the line from conceivable to plausible" under the lenient pleading standards of FRCP 8(a). *Id*. at 680 (internal citations and quotations omitted). The now familiar law regarding a prima facie case and burden shifting related to alleged nondiscriminatory reason is a helpful prism for conducting that analysis, but it must be remembered that the prima facie standard and burden shifting are evidentiary standards, not pleading standards. *Swierkiewicz v. Sorema N.A*., 534 U.S. 506 (2002).

Under the evidentiary standard that will apply later in this case, the Tribe can meet its burden through either direct evidence of discrimination or indirect evidence. "A plaintiff alleging discrimination on the basis of race may prove intentional discrimination through either direct evidence of discrimination (e.g., oral or written statements on the part of a defendant showing a discriminatory motivation) **or** indirect (i.e., circumstantial) evidence of discrimination." *Burns v.Bd. of Cnty. Comm'rs of Jackson Cnty.*, 330 F.3d 1275, 1283 (10th Cir. 2003) (citing *Kendrick v. Penske Transp. Servs., Inc.,* 220 F.3d 1220, 1225 (10th Cir. 2000) (emphasis added); *Villanueva v. Carere*, 85 F.3d 481, 486 (10th Cir. 1996) ("Although the parents presented no direct evidence

of discriminatory intent, the district court's inquiry could not stop there. 'Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.'") (quoting *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977).

Under the pleading standard, which is the applicable standard here, a plaintiff "need not allege facts establishing each element of a prima facie case of discrimination to survive a motion to dismiss." *Taylor v. City of New York*, 207 F. Supp. 3d 293, 299 (S.D.N.Y 2016) (citing *EEOC v. Port Auth of N.Y & N.J.*, 768 F.3d 247, 254 (2d Cir. 2013). "[I]n making the plausibility determination, the court must be mindful of the 'elusive' nature of intentional discrimination. *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 86 (2d Cir. 2015).

Despite the fact that this Court clearly found claims against Defendant Ure plausible, he now attempts to hide behind an argument that, nonetheless, he is entitled "qualified immunity" on the basis that the Tribe has failed to allege invidious discrimination in the Complaint with respect to its Section 1981, 1982, and 1985 claims. His argument breezes past (a) the lenient Rule 12(b)(6) standard that must be applied at pre-discovery, sufficiency-of-the-pleadings stage in litigation. But even beyond that, the Tribe has pled these federal constitutional claims against Defendant Ure in great detail, as set forth herein.

B. Federal rights were clearly established at the time of the unlawful conduct.

As the Court recognized, because the right to contract for and purchase land and to not be discriminated against is not an exclusively sovereign right, the Tribe is a person under Section 1983 for its claims of unlawful discrimination. Further, the Court recognized that the Tribe's claims can be brought as *parens patriae* on behalf of its members, who are indisputably people entitled to federal constitutional protections. Indeed, Section 1983 of Title 42 provides a cause of action when a

"person" violates another "person's" constitutional rights. 42 U.S.C § 1983. Sections 1981 and 1982, which protect rights to "make and enforce contracts" and to "inherit, purchase, lease, sell, hold, and convey real and personal property," respectively, are enforceable through Section 1983. *See Jett v. Dallas Indep. Sch. Dist.,* 491 US 701, 722 (1989).

1. **The Tribe states a claim against Defendant Ure for violations of Section 1981.**

Section 1981 prohibits discrimination in the making and enforcement of contracts. Here, whether or not there was a contract formed between SITLA and the Tribe is not dispositive. Indeed, Section 1981 safeguards the Tribe's rights in the making, performance, modification, and termination of contracts, as well as the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship. *See Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470 (2006).

Defendant Ure acknowledges that in order to state a claim under Section 1981, a plaintiff must show (1) that plaintiff is a member of a protected class; (2) that the defendant had the intent to discriminate on the basis of race; and (3) that the discrimination interfered with a protected activity as defined in Section 1981. Dkt. 77 at 21 (citing *Hampton v. Dillard Dep't Stores, Inc.*, 247 F.3d 1091, 1102 (10th Cir. 2001)).

According to Ure, "Plaintiff has not plausibly alleged Defendant Ure interfered with Plaintiff's right to make or enforce a contract . . . because there was never any contract that was formed." Dkt. 77 at 21. Whether or not a contract was formed is an issue for the merits of this litigation; but even assuming *arguendo* that no contract was formed, it was not formed because Defendant Ure and other defendants prevented the contract from being formed. Even applying the law Ure cites, such a claim involves "the actual loss of a contract interest." Dkt. 77 at 21 (citing cases).

The Tribe has clearly pleaded Defendant Ure's interference with the Tribe's ability to contract for the sale of Tabby Mountain in a way that would certainly not have happened had DNR

had the highest bid. See particularly the Amended Complaint at § 2, 3, 4, 5, 10 as well as the discussion *infra* at pp. 13-14.

2. The Tribe states a claim against Defendant Ure for violations of Section 1982.

Section 1982 protects the constitutional rights of all citizens of the United States to inherit, purchase, lease, sell, hold, and convey real and personal property without racial discrimination. This statute ensures that these property rights are enjoyed equally by all citizens, regardless of race, as is enjoyed by white citizens. 42 U.S.C § 1982. The statute bars all racial discrimination, both private and public, in the sale or rental of property. *Jones v. Alfred H. Mayer Co.* 392 U.S. 409 (1968). This interpretation was reaffirmed when the Supreme Court emphasized that the statute forbids both official and private racially discriminatory interference with property rights. *Shaare Tefila Congregation v. Cobb,* 481 U.S. 615 (1987). The statute was intended to protect identifiable classes of persons who are subject to **intentional discrimination solely because of their ancestry or ethnic characteristics**. *Id.* (Emphasis added).

The historical context of 42 USC § 1982, derived from the Civil Rights Act of 1866, underscores its foundational role in securing property rights for all citizens. The statute was enacted under the sanction of the Thirteenth Amendment and re-enacted after the adoption of the Fourteenth Amendment to ensure that colored persons have the right to purchase property and enjoy and use the same without laws discriminating against them solely on account of color. *Buchanan v. Warley*, 245 U.S. 60 (1917).

The Tribe has clearly pleaded against Defendant Ure the elements of a Section 1982 claim. Here, in its Amended Complaint, the Tribe pleads clearly that "The Ute Indians of the Uintah and Ouray Indian Reservation constitute a distinct minority population based on race, ancestry, ethnicity, national origin and relation." Amended Complaint at § 18. Also, at §§ 32-43, in particular, the Tribe

explains how the history of the Tribe and the land in question lays the foundation and context for the ongoing discrimination it is experiencing at the hands of Defendants, including Defendant Ure.

3. The Tribe states a claim against Defendant Ure for a violation of 42 U.S.C. § 1985.

42 U.S.C. § 1985 addresses conspiracies to interfere with civil rights. It is divided into three subsections: (1) preventing an officer from performing duties, (2) obstructing justice by intimidating parties, witnesses, or jurors, and (3) depriving persons of rights or privileges. 42 U.S.C. § 1985**.** For present purposes, 42 U.S.C. § 1985(3) provides that if two or more persons conspire to deprive any person or class of persons of equal protection of the laws, and if an act in furtherance of the conspiracy results in injury or deprivation of rights, the injured party may seek damages against the conspirators. *Id.* So to establish a claim under 42 U.S.C. § 1985(3), a plaintiff must (1) demonstrate a conspiracy; (2) to deprive the plaintiff of equal protection or equal privileges and immunities; (3) an act in furtherance of the conspiracy; and (4) an injury or deprivation resulting from the conspiracy. *Galindo v. Taylor*, 723 F. Supp. 3d 1008, 1030 (D. Kan. 2024). Additionally, the conspiracy must be motivated by some racial, or perhaps otherwise class-based, invidiously discriminatory animus. *Id; Tilton v. Richardson,* 6 F.3d 683, 686 (10th Cir. 1993).

Defendant Ure's remark that Section 1985 does not implicate "equal protection" is beyond the pale. In fact, the text of Section 1985 uses those very words:

> If two or more persons in any State or Territory conspire. . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the **equal protection of the laws**, or of equal privileges and immunities under the laws; or
> for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the **equal protection of the laws**. . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

The plain language of 42 U.SC § 1985 belies Defendant Ure's baseless contentions. And his comment that "there are no allegations that Plaintiff was treated differently than other similarly situated entities" on the basis that "no other private entities placed a bid on the property, only public entities" borders on the offensive. The Tribe is a sovereign nation that, in compliance with the mandatory bid process, outbid DNR, another public entity. The entire basis of the Tribe's Amended Complaint is that the Tribe was treated differently on the basis that the Tribe constitutes a "distinct minority population based on race, ancestry, ethnicity, national origin and relation." Amended Complaint at § 18.

The Tribe has more than sufficiently pleaded that Defendant Ure was a central part of the conspiracy against the Tribe. In fact, the Tribe's complaint alleges facts that show that Defendant Ure was the architect of the conspiracy. That is why he was chosen as the lead defendant. It is possible that later discovery, particularly depositions of the various rogue actors under oath, will show that those above him had as much or more responsibility—that he was only "following orders" from Executive Branch officers or others--but the complaint in this case vastly exceeds the minimal standard for pleading a claim of wrongful discrimination by Defendant Ure.

The Tribe's Complaint alleges that Defendant Ure played a key and pivotal role in the illegal discrimination aimed at the Tribe. Specifically, in ¶ 10, the Tribe's Amended Complaint notes that Defendant Ure "was the Director of SITLA from about January 2016 until March 2022, and took actions related to this matter under color of the law of the State of Utah." The sequence of events leading up to and including SITLA's discriminatory decision not to sell Tabby Mountain to the Tribe occurred from 2018-2019—all within the time period that Defendant Ure served as SITLA's Director.

The Tribe's Amended Complaint at ¶¶ 62 and 64 details how "[o]n December 20, 2018, Margaret Bird (in a role as a consultant and also on behalf of two state university realty officers)

sent a memo to SITLA Director Ure regarding the proposed sale. She did not question whether selling the land was in the Trust's best interests, but did question the prudence of the proposed plan for marketing the property. … In that same memo and related communications, *Ms. Bird expressed her view that Director Ure had structured the sale process with the goal of selling the land to DNR, instead of with the goal of maximizing the income to the trust*." (Emphasis added). Throughout the bidding process, it was Defendant Ure who sent communications to the Tribe (and presumably, to other bidders). *E.g.*, Tribe's Amended Complaint at ¶ 74 ("On Tuesday, February 19, 2019, SITLA Director Ure sent a letter to Ute Business Committee Chairman Luke Duncan notifying him that SITLA had received the Tribe's bid."). After the Tribe won the bid, it was "Director Ure [who] responded that the decision had been made not to contact the Tribe." Tribe's Amended Complaint at ¶ 78. In furtherance of the conspiracy to keep the land out of the hands of the Indians, it was "Director Ure [who] sent a letter to the Tribe stating that DNR countered the Tribe's bid with a higher bid of $50,000,000.00. At the time Director Ure sent that letter, Defendants knew the bid of $50,000,000 was a sham." Tribe's Amended Complaint at ¶ 89.

Further, "[c]onsistent with the conspiracy, after receiving DNR's sham bid," it was "SITLA and Director Ure [that] postponed the sale indefinitely without giving the Tribe or anyone else an opportunity to question DNR's sham bid and without giving the Tribe an opportunity to increase its bid. On February 22, 2019, SITLA issued a press release, providing public notice that it had voted to "temporarily suspend proceedings on a proposed sale." SITLA Director Ure sent a letter informing the Tribe that SITLA's Board of Trustees voted to suspend the proposed sale, and falsely stating that the reason for the suspension was for SITLA to address the trust beneficiaries' concerns regarding the accuracy of the appraisal and the length of time that the property was advertised." Tribe's Amended Complaint at ¶¶ 92, 93, 94.

Defendant Ure's argument that the Tribe has failed to allege discrimination on his part, both as an individual actor and as a member of the conspiratorial scheme designed to keep Tabby Mountain out of the Tribe's hands cannot stand in light of the facts extracted from the Tribe's Amended Complaint and highlighted above. Not only has the Tribe shown circumstantial and direct evidence of discrimination, but it has highlighted Defendant Ure's participation in that discrimination clearly and directly.

For all of the foregoing reasons, Defendant Ure is a proper defendant in both his individual and official capacities.

DATED this 22nd day of May, 2025.

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