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UNITED STATES DISTRICT COURT DISTRICT OF UTAH, CENTRAL DIVISION

Lynn D. Becker, Plaintiff, v. Ute Indian Tribe of the Uintah and Ouray Reservation, a federally recognized Indian tribe; the Uintah and Ouray Tribal Business Committee, and Ute Energy Holdings, LLC, a Delaware LLC. Defendant(s).	**DEFENDANTS' RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION** Civil No. 2:25-cv-00643-DAK Judge: Dale A. Kimball

DEFENDANTS' RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION

Defendants Ute Indian Tribe of the Uintah and Ouray Reservation, a federally recognized Indian tribe (the "Tribe"); the Uintah and Ouray Tribal Business Committee (the "Business Committee"); and Ute Energy Holdings, LLC, a Delaware LLC ("Ute Holdings") (together, the "Tribal Defendants") file this response to motion for preliminary injunction ("Motion") filed by Plaintiff Lynn Becker ("Becker"). To date, Becker has served

only Ute Holdings with pleadings in the case, and the Tribe and the Business Committee do not admit or waive service by including themselves in this response. This response incorporates by reference Holdings' (*i*) motion to strike the complaint and the exhibits thereto, and (*ii*) motion to dismiss, both of which are being filed consecutively to this response.

In addition, the Tribal Defendants seek a security bond under Fed.R.Civ.P. 65(c) in an amount of $250,000.00, which is a reasoned assessment of the potential harm to the Tribal Defendants should the Motion be granted. This includes reasonable costs and expenses likely to be incurred by Tribal Defendants in defending against and appealing any injunction and is necessary to protect the Tribal Defendants for the reasons outlined below.

INTRODUCTION

The issues raised in the Motion have already been litigated and lost twice in the Tenth Circuit Court of Appeals.

The first was in *Becker v. Ute Indian Tribe of the Uintah & Ouray Rsrv.*, 868 F.3d 1199 (10th Cir. 2017) ("*Becker II*"). In *Becker II*, the Tenth Circuit held that the "exhaustion rule applies" and that "Mr. Becker has not shown a substantial likelihood of success of the exhaustion issue." *Id.* at 1205. The Tenth Circuit reversed and remanded to the district court "to proceed consistently with this opinion." *Id.* at 1206.

The second was in *Becker v. Ute Indian Tribe of Uintah & Ouray Rsrv.*, 11 F.4th 1140 (10th Cir. 2021), *cert denied*, 143 S. Ct. 273 (Mem) (2022) ("*Becker III*"). Here, again, the Tenth Circuit held that the exhaustion rule applies: "Becker 'has not yet

obtained appellate review' of the Tribal Court's conclusions. 'Until [such] appellate review is complete, the [Ute Indian] Tribal Courts have not had a full opportunity to evaluate the [Tribe's] claim[s] and federal courts should not intervene." *Id.* at 1150 (alteration in original) (citation omitted) (quoting *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 17 (1987)).

Becker now seeks to avoid Tribal Court jurisdiction a third time without exhausting Tribal Court remedies. This latest Motion unreasonably multiplies the proceedings in this case, is patently groundless and vexatious and must be denied.

BACKGROUND

Becker worked for the Ute Indian Tribe from March 2004 through October 2007 pursuant to an Independent Contractor Agreement ("IC Agreement") which the Tribal Court has held to be an illegal contract under both federal law and Ute Indian tribal law. *See, e.g.*, Tribal Court Order and Opinion of Feb. 28, 2018 (Becker Ex. 19, ECF 4-19, pp. 10-18), and Tribal Court's Third Opinion of October 31, 2023. Becker Ex. 31, ECF 5-11.

Since 2012, Becker has filed multiple lawsuits against the Ute Indian Tribe in both federal court and Utah state court, seeking millions of dollars in damages under the illegal IC Agreement. After years of litigation, the United States Tenth Circuit Court of Appeals ruled conclusively in 2021 and 2022 that (*i*) federal law requires Becker to exhaust tribal court remedies through the Ute Indian Tribal Courts, and that (*ii*) Utah state courts have no subject-matter jurisdiction to adjudicate Mr. Becker's claims against the Tribe. *Becker III*, 11 F.4th at 1150 (directing the Utah federal district court to dismiss Becker's federal court suit and requiring Becker to exhaust tribal court remedies through the Ute Indian "Tribal [Trial and] Appeals Court"); *Ute Indian Tribe of the Uintah and Ouray Reservation*

v. Lawrence, 22 F.4th 892, 910-11 (10th Cir. 2022), *cert denied*, 143 S. Ct. 273 (Mem) (2022) (directing entry of a permanent injunction to enjoin Becker's state court lawsuit against the Tribe).

The Ute Indian Tribe, its Tribal Business Committee, and Ute Energy Holdings LLC (a wholly tribally-owned entity) commenced a Tribal Court lawsuit against Becker in 2016, seeking declaratory judgment relief and damages for fraud, constructive fraud, breach of fiduciary duty, and other claims.

On June 28, 2017, the Presiding Judge Pro Tem, the Honorable Thomas Weathers, entered an order that bifurcated the Tribal Court case into a Phase I and a Phase II. Motion to Dismiss, Exhibit A.[1]

On January 10, 2018, the Chief Judge of the Tribal Court reassigned the Tribal Court case to the Honorable Terry L. Pechota, and Judge Pechota has presided over the case since the 2018 reassignment. ECF Doc. 5-7.

A four-day bench trial was scheduled to commence in Tribal Court on April 28, 2025. Motion to Dismiss, Exhibit B. In March 2025, Attorney Frances Bassett filed an emergency motion to vacate the trial setting due to impending death of her mother. *Id.* The Tribal Court granted the motion to vacate and directed the Tribe's counsel "to coordinate with the Court and opposing counsel in rescheduling the trial and in entering an amended scheduling order." Motion to Dismiss, Exhibit C. Thereafter, in attempting to coordinate a new trial setting, the Tribe's counsel verified that the earliest date on which the Tribal Court courtroom was open and that Judge Pechota and all expert witnesses

[1] The Motion to Dismiss is filed contemporaneously herewith.

would be available for a rescheduled trial would be September 22-25, 2025. The Tribe's attorneys so notified Mr. Becker's counsel, Attorney David Isom. Motion to Dismiss, Exhibit D. Thereafter, on August 4, 2025, the Tribe's counsel sent Attorney Isom an amended pretrial order for his review. Motion to Dismiss, Exhibit E. However, on that same day—and without any advance notice to the Tribe's attorneys—Mr. Becker filed this *third* federal lawsuit against the Tribe, its Tribal Business Committee, and Ute Energy Holdings in the U.S. District Court for the District of Utah, *Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation et al.*, case number 2:25-cv-00643. The Tribe's attorneys learned of the filing via an email that Becker's Attorney, David Isom, sent at 8:42 p.m. that evening, enclosing a copy of the new complaint and Becker's motion to once again enjoin the Tribal Court suit. Motion to Dismiss, Exhibit F.

Attorney Isom never responded to the draft amended pretrial order the Tribe's attorney had sent him on August 4, 2025. Thus, on August 6, 2025, the Tribe's attorneys filed a formal request for trial setting with the Tribal Court. Motion to Dismiss, Exhibit G.

On August 12, 2025, Attorney Isom filed a pro forma objection to the request of Tribal Setting and a motion to recuse Judge Pechota. Motion to Dismiss, Exhibit H. That motion has been certified to another Tribal Court judge to decide. Motion to Dismiss, Exhibit I.

COUNTERSTATEMENT OF FACTS

Throughout the Motion section captioned "FACTS", Becker makes arguments based on a record he has drawn out for the apparent purpose of misconstruing.

Initially, throughout the Motion, Becker conflates "jurisdiction" with a defense of tribal sovereign immunity to make the specious argument that all "parties now agree, and the tribal court has finally held, that Section 1-2-3(5) deprives the tribal court of jurisdiction over Becker's claims." Motion at 4. This is false.

Here, the Tenth Circuit has distinguished between tribal sovereign immunity from subject-matter jurisdiction on the ground that, unlike subject matter jurisdiction, sovereign immunity may be waived. *Lawrence*, 875 F.3d at 545. The Tribal Court agrees that sovereign immunity may be waived, holding that, on these facts, it remains intact. Exhibit B at 6. It has also upheld on at least three sperate occasions (after allowing Becker additional argument) that it has jurisdiction over Becker's claims. *Id.* at 3-6.

To claim as a "fact" in the Motion that the parties and Tribal Court agree that the Tribal Court lacks jurisdiction is false and ignores at least three Tribal Court opinions and the Tenth Circuit's decision in *Becker III*, recognizing that "since *Becker II* issued, the Tribal Court has determined that it has jurisdiction over the Tribe's suit against Becker . . . . ." *Becker III* at 1150. Becker's groundless Motion unreasonably multiplies the proceedings in this case and is vexatious and must be denied.

LEGAL STANDARD

It is well settled that in order for a party to obtain the "extraordinary remedy" of a preliminary injunction, "a moving party must establish four elements: '(1) a substantial likelihood of success on the merits; (2) irreparable harm to the movant if the injunction is denied; (3) the threatened injury outweighs the harm ... the preliminary injunction may cause the opposing party; and (4) the injunction, if issued, will not adversely affect the

public interest.'" *NetChoice, LLC v. Reyes*, 748 F. Supp. 3d 1105, 1119 (D. Utah 2024) (quoting *Leachco, Inc. v. Consumer Prod. Safety Comm'n*, 103 F.4th 748, 752 (10th Cir. 2024)). *See e.g., Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 20 (2008); *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1210 (10th Cir. 2009); *Klein-Becker USA, LLC v. Prod. Quest Mfg., Inc*., 429 F. Supp. 2d 1248, 1251 (D. Utah 2005).

Moreover, "[a]s a preliminary injunction is an extraordinary remedy, the right to relief must be clear and unequivocal." *Schrier v. Univ. Of Co*., 427 F.3d 1253, 1258 (10th Cir. 2005). "A preliminary injunction is 'an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it.'" *Cassell v. Snyders*, 990 F.3d 539, 544 (7th Cir. 2021) (Citations omitted.) "An injunction can issue only if each factor is established." *Denver Homeless Out Loud v. Denver, Co*, 32 F.4th 1259, 1277 (10th Cir. 2022). Here, for reasons elaborated upon below, Becker cannot establish any of the four factors, and his Motion for Preliminary Injunction should be denied.

ARGUMENT

I. Becker is unlikely to succeed in showing that no further exhaustion duty exists.

"To succeed in [his] quest for a preliminary injunction," Becker "assume[s] the burden of making a *strong showing* that [he is] likely to succeed on the merits." *Does 1-11 v. Bd. of Regents of Univ. of Colorado*, 100 F.4th 1251, 1268 (10th Cir. 2024) (quoting *Awad v. Ziriax,* 670, F.3d 1111, 1129 (10th Cir. 2012) (Emphasis added.) The mandates from the Tenth Circuit in *Becker II* and *Becker III* demanding tribal court exhaustion proves Becker cannot make a strong showing that he has a substantial likelihood of success on the merits. In actuality, in accordance with the Tenth Circuit's clear-cut commands, Becker

has absolutely no chance of success on the merits. Relevant here, the United States Supreme Court almost eighty years ago succinctly explained what law students are taught their first day of class, that "an inferior court has no power or authority to deviate from the mandate issued by an appellate court." *Briggs v. Pennsylvania R. Co.,* 334 U.S. 304, 306 (1948).

As this Court noted, "'laws of the case' rules have developed to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit [and] of these rules, the most compelling is the mandate rule." *Ute Indian Tribe v. State of Utah*, 935 F. Supp. 1473, 1516 (D. Utah 1996) (quoting *Casey v. Planned Parenthood of Se. Pennsylvania*, 14 F.3d 848, 856 (3d Cir. 1994) (overruled on other grounds). Moreover, "The so-called 'mandate rule is simply a subspecies of the venerable 'law of the case' doctrine, a staple of our common law as old as the Republic.'" *Ute Indian Tribe*, 935 F. Supp. at 1516-17; *see also Grigsby v. Barnhart*, 294 F.3d 1215, 1218 (10th Cir. 2002) ("'once a court decides an issue, the same issue may not be relitigated in subsequent proceedings in the same case' and there must be compliance with the reviewing court's mandate." (Quoting *Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah,* 114 F.3d 1513, 1520 (10th Cir.1997)). As Judge Jenkins stated, "In this Circuit, 'The rule is well established that a district court must comply strictly with the mandate rendered by the reviewing court.'" *Ute Indian Tribe*, 935 F. Supp. at 1517.

In this case, Becker's violation of the Tenth Circuit's mandates in *Becker II and Becker III* lead to one outcome: there is no conceivable way for Becker to succeed on the

merits in this bad faith suit brought against the Tribe. In *Becker III*, the Tenth Circuit adopted, virtually verbatim, the mandate language from *Becker II*, ruling specifically that:

> In *Becker II*, this court previously concluded that the tribal "exhaustion rule applie[d]" to Becker's federal action and that, consequently, "the [T]ribal [C]ourt should consider in the first instance whether it ha[d] jurisdiction." Since *Becker II* issued, the Tribal Court has determined that it has jurisdiction over the Tribe's suit against Becker and has also agreed with the Tribe that the Agreement is void under both federal and tribal law. But, due in no small part to the district court's issuance of an injunction prohibiting the parties from proceeding in Tribal Court, Becker "has not yet obtained appellate review" of the Tribal Court's conclusions *"Until [such] appellate review is complete, the [Ute Indian] Tribal Courts have not had a full opportunity to evaluate the [Tribe's] claim[s] and federal courts should not intervene."* "If [and when] the Tribal Appeals Court upholds the lower court's determination that the tribal courts have jurisdiction, [Becker] may challenge that ruling in the District Court." In the meantime, we conclude that the proper course of action is to remand to the district court with directions to dismiss Becker's federal action without prejudice. Necessarily, that requires us to reverse, without ruling on the merits, the preliminary injunction issued by the district court enjoining the Tribal Court proceedings and precluding the Tribal Court's orders from having effect in other proceedings.

Becker III at 1150. (Emphasis added) (internal citations omitted.) Thus, the *Becker II* and *Becker III* mandates require an exhaustion of tribal court remedies through the Ute Indian Appellate Courts. To date, Becker has not exhausted remedies available to him via the Ute Indian Appellate Courts. His failure to exhaust Ute Tribal Appellate Court remedies tracks given he has not even exhausted his Tribal Trial Court remedies. The arguments Becker makes as to why he need not exhaust tribal court remedies are devoid of any merit and this Court should give them no credence because "[a]t a minimum, exhaustion of tribal remedies means that tribal appellate courts must have the opportunity to review the determinations of the lower tribal courts." *Iowa Mut.*, 480 U.S. at 17.

Becker fails to prove that no further tribal court exhaustion duty exists. He cites *National Farmers Union Ins. Cos v. Crow Tribe*, 471 U.S. 845, 857 (1985) as support for his representation that "[u]nder some circumstances, an Indian tribe-related dispute must be presented to a tribal court before it can be considered in a federal or state court." Motion at 9. This is not a direct quote from *National Farmers* Union, rather, Becker's own flippant way of surmising the doctrine of tribal court exhaustion, which is part and parcel of tribal sovereignty. Becker makes this statement ostensibly to frame tribal court exhaustion as an exception rather than the well-established rule.

Understanding the reality that tribal court exhaustion is the rule rather than the exception, the Supreme Court in *National Farmers Union* Ins. Cos. reached the same conclusion as the Tenth Circuit in *Becker II* and *Becker III*, holding that examination should be conducted in the first instance in the Tribal Court. *See National Farmers Union Ins. Cos.,* 471 U.S. at 857.[2] As stated above, Becker has exhausted neither trial nor appellate court remedies in the Ute Indian Tribal Court system, and his arguments that he need not do so prove too much. Lest Becker not forget the words of the late Justice Thurgood Marshall: "It must always be remembered that the various Indian tribes were once independent and sovereign nations, and that their claim to sovereignty long predates that

[2] "We believe that examination should be conducted in the first instance in the Tribal Court itself. Our cases have often recognized that Congress is committed to a policy of supporting tribal self-government and self-determination. That policy favors a rule that will provide the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge."

of our own Government." *McClanahan v. State Tax Comm'n of Arizona*, 411 U.S. 164, 172 (1973).

Becker spills much ink presenting red herrings to this Court as to why an exception to exhaustion applies, but naturally, Becker fails to mention how the Tenth Circuit has "taken a strict view of the tribal exhaustion rule and ha[s] held that 'federal courts should abstain when a suit sufficiently implicates Indian sovereignty or other important interests." *Kerr-McGee Corp. v. Farley,* 115 F.3d 1498, 1507 (10th Cir. 1997) (quoting *Pittsburg & Midway Coal Mining Co. v. Watchman,* 52 F.3d 1531, 1542 (10th Cir.1995)). Further, these exceptions "are applied narrowly" and the Tenth Circuit requires "a party invoking any of these exceptions to 'make a substantial showing of eligibility.'" *Chegup v. Ute Indian Tribe of Uintah & Ouray Rsrv*., 28 F.4th 1051, 1061 (10th Cir. 2022). (Internal citations omitted.) As the First Circuit aptly noted, "[a]lthough claims of futility, bias, bad faith, and the like roll easily off the tongue, they are difficult to sustain." *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth.,* 207 F.3d 21, 34 (1st Cir. 2000). Such is the case here with the hollow assertions bereft of factual and legal substance that are palmed off in Becker's Motion.

A. The Tribal Court action is not patently violative of the express jurisdictional prohibition of section 1-2-3(5) of the Ute Law & Order Code.

Becker puts forth the argument that "no further tribal court exhaustion can exist once it is established that such jurisdiction patently violates express jurisdiction prohibitions." Motion at 10. This is an accurate statement of the law; however, Becker goes on to present knowingly false statements of fact. Such as, "all parties agree, and the tribal court has now held, that express tribal law forbids tribal court jurisdiction of Becker's claims, no

appeal to the Ute Tribe court of appeals or other tribal court exhaustion is possible or required." *Id*. This is false.

Becker already lost on these issues in Tribal Court. *See* February 2018, *Tribal Court Order.* The fact is, Section 1-2-3(5) and its jurisdictional reach was ruled on multiple times in tribal court in favor of Defendants, and *Becker III* mandated that until tribal appellate review is complete, federal courts should not intervene. *Becker III* at 1150. *Becker III* also held that the Tribal Court must determine in the first instance the "threshold question of whether [it] has jurisdiction over the parties' dispute. In reaching this conclusion, we note that defendants have not persuaded us that any of the narrow exceptions to the tribal exhaustion rule apply here." *Id.* Becker unwaveringly clings on to his argument regarding Section 1-2-3(5) as a jurisdictional bar despite the fact it that has already been rejected multiple times, and in doing so blinks the reality of the Tribal Court record. *See* February 2018, *Tribal Court Order*. Becker is allowed to cling onto his meritless argument, so long as he appeals that meritless argument in the tribal court system before coming to this Court.

B. Contrary to Becker's assertions, it is clear the Tribal Court *has* jurisdiction, and the exhaustion of Tribal Court remedies does in fact serve a purpose other than delay.

Becker regurgitates the same argument that he already put forth above about the Tribal Court's lack of jurisdiction under 1-2-3(5), but this time for the purpose of arguing that tribal court exhaustion serves no purpose other than delay, since in his view, "it is clear the tribal court lacks jurisdiction." Motion at 10. Against the backdrop of the record, this is an argument "bordering on the frivolous" (if not outright frivolous). *D.C. v. Heller,*

554 U.S. 570, 582 (2008). It is perplexing to argue that tribal court exhaustion serves no purpose other than delay when the Tenth Circuit explicitly ordered Becker to exhaust tribal court remedies before coming to federal court. With lamentable irony, the actual delay is Becker filing his Complaint in federal court contemporaneously with a Motion for Preliminary Injunction, on the eve of trial in Tribal Court, and then proceeding to state tribal court exhaustion serves no purpose other than delay—despite the fact trial in Tribal Court is imminent. Compounding this lamentable irony, Becker is presently objecting to proposed trial dates for the upcoming trial in Tribal Court, further proving he is the party responsible for delays—not Defendants.

Again, if Becker believes the Tribal Court lacks jurisdiction, he can argue that in front of the Tribal Appellate Court, as commanded by the Tenth Circuit's mandates in *Becker II and Becker III*. Upon the completion of this hypothetical scenario where Becker actually complies with the Tenth Circuit's mandate, depending on the ruling from the Tribal Appellate Court, then Becker could come to this Court. In sum, to repeat and emphasize, the true delay here is brought by Beckers' vexatious lawsuits—not any bad faith from the Tribe.

C. The assertion of Tribal Court jurisdiction is not motivated by a desire to harass Becker and is not being conducted in bad faith.

The very nature of litigation within our adversarial system necessarily means there will be favorable outcomes for one party and unfavorable outcomes for the other. Nevertheless, that does not give a litigant the right to sling mud via reckless allegations of "bad faith", "harassment", and "conspiracy" when that party does not like the advocacy from opposing counsel, or when that party disagrees with the rulings from a court. Motion

at 11-15. The proper remedy, if Becker does not agree with the Tribal Court's rulings is not to make groundless accusations that the Tribe and Tribal Court are acting in bad faith, harassing, and conspiring against him. Rather, the proper remedy for Becker is appealing the portions of the rulings he does not agree with to the Tribal Appellate Court to receive finality under the tribal exhaustion rule—as he was instructed to do by the Tenth Circuit's mandates in *Becker II* and *Becker III.*

Becker makes the false and borderline slanderous assertion that Judge Thomas Weathers was terminated when he ruled against the Tribe. Motion at 12. In fact, the Tribe's contract with the Northwest Intertribal Court System expired, and Judge Weathers, part of that network, was no longer retained as Tribal Judge pro tem. By order dated January 10, 2018, of Thelma J. Stiffarm, Chief Judge, Ute Indian Tribal Court, the case was reassigned to the Honorable Terry L. Pechota. Becker is implying that the Ute Indian Tribe has a system of Basmanny justice which is as false as it is odious. Disagreeing with rulings from the Tribal Court does not equate to bad faith and harassment, and it certainly does not allow Becker to masquerade conspiracy theories in the form of legal arguments before this Court.[3]

Moreover, it does not allow Becker to make knowingly false assertions such as "Judge Pechota finally dismissed Becker's counterclaims for lack of jurisdiction based on Section 1-2-3(5) on November 26, 2024." Those counterclaims were actually dismissed on account of the statute of limitations expiring, lack of a sovereign immunity waiver, and

[3] Rebuttals to Becker's false factual assertions that he puts forth to support his arguments regarding "bad faith" and "harassment" were outlined in the counterstatement of facts section of this Response and will not be repeated here.

failure to join the United States. *See* November 26, 2024, Order Dismissing Defendant's Counterclaims, *Ute Indian Tribe v Becker*, Case No. CV-16253 (Ute Indian Court of the Uintah and Ouray Reservation). For all the above-mentioned reasons, this Court should pay no mind to Becker's arguments alleging "bad faith" and "harassment." Consequently, this Court should find that no exception to tribal court exhaustion applies, and yet again, that Becker must comply with *Becker II and Becker III*'s mandates.

II. Becker Cannot be found to suffer any harm, much less irreparable harm.

Tenth Circuit precedent dictates that "[b]ecause a showing of probable irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction, the moving party must first demonstrate that such injury is likely before the other requirements for the issuance of an injunction will be considered." *Dominion Video Satellite, Inc. v. Echostar Satellite Corp*., 356 F.3d 1256, 1260 (10th Cir. 2004) (citations omitted). In addition, "Although irreparable harm 'does not readily lend itself to definition,' 'a plaintiff must demonstrate a significant risk that he or she will experience harm that cannot be compensated after the fact by money damages [and] [t]hat harm 'must be both certain and great' and not 'merely serious or substantial.'" *Id; (*quoting *Fish v. Kobach,* 840 F.3d 710, 751-52 (10th Cir. 2016); *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001)). Simply complying with mandates issued by the Tenth Circuit in *Becker II* and *Becker III*, namely, instructing that Becker adhere to the doctrine of tribal court exhaustion, is not certain and great harm, nor is it serious or substantial. It is merely following the law, and nowhere near the high standard required to show irreparable harm.

Contrary to Becker's assertions, he will not be irreparably harmed by the continuation of the Tribal Court Action. In fact, the inverse is true. If this Court grants Becker's Motion for Preliminary Injunction and enjoins the Tribal Court proceedings—irreparable harm will be done to the rule of law. To grant Becker's Motion means this Court must ignore a crystal-clear mandate from the Tenth Circuit regarding tribal court exhaustion, and in doing so would offend the tiered structure of the federal judiciary.

Becker also states he will be irreparably harmed by "the time, work, money, uncertainty and confusion required to litigate in a forum that the parties bargained against and that all parties and the court itself now agree cannot adjudicate Becker's claims." Motion at 15. The falsity of the latter half of that statement aside (as explained above), the former half of Becker's statement selfishly fails to consider the resources the Tribe must expend to defend against Becker's frivolous Motion. If the Motion for Preliminary Injunction is granted, irreparable harm will not be done to Becker, but the court system at large, by way of indulging Becker's blatant disregard for the Tenth Circuit's mandates and the tiered federal court system. Becker is living in "a veritable fairyland castle of imagined" irreparable harm when all he needs to do is simply comply with mandates from the Tenth Circuit. *Minnick v. Mississippi*, 498 U.S. 146, 166 (1990) (Scalia, J, dissenting).

III. Because of the Becker II and Becker III mandates, there is no equity to be balanced in Becker's favor.

There is no equity to be balanced in Becker's favor due to his self-induced prolongment of litigation by fighting tribal court jurisdiction at every turn, and in doing so shamelessly retreading his already rejected arguments regarding the futility of tribal court exhaustion. Further, Becker has forced and continues to force the Tribe to expend

precious resources defending itself against his salvo of vexatious litigation in every court except the forum where jurisdiction is actually proper—the Tribal Court. This lends support to the conclusion that there is no equity to be balanced in Becker's favor. Every dollar the Tribe spends to defend this lawsuit is a dollar that could be better spent serving the Tribe's children or elders, and thus proves the balance of equities weighs in the Tribe's favor—not the Becker's. If Becker would merely comply with the *Becker III* mandate and exhaust tribal court remedies as instructed, then all parties would benefit and be on a path towards finality of this litigation. There is no equity to be balanced in Becker's favor considering how he perpetually hamstrings any attempt to move forward in Tribal Court, and this Court should rule against him accordingly on this factor.

IV. The Public Interest is not served by a lower court effectively disregarding and ignoring appellate court mandates.

Finally, the public interest is served by forcing Becker to abide by an explicitly clear mandate from a higher court, which in turn promotes the orderly administration of justice. There is arguably no greater public interest than the orderly administration of justice and the rule of law, which is the bedrock of our constitutional democracy. As famously said by John Adams, the United States is premised upon the ideal that we are "a government of laws, not of men."[4] Simply put, officers of the court must adhere to the rule of law. If the federal judiciary gives its imprimatur to vexatious litigation strategies like Becker's, and allows attorneys to disregard mandates from higher courts, play fast and loose with

[4] Curtis L. Collier, United States District Judge, *et al., The Rule of Law – Implemented By Men and Women*, CONNECTIONS (Friday, April 19, 2024), https://connections.ca6.uscourts.gov/node/127.

well-established legal principles, and make factual misrepresentations in their filings, then our constitutional democracy can and will backslide.

Particularly relevant here, as it relates to the public interest in ensuring respect for the Constitution and the rule of law, are the Article II Treaty Clause and the Article IV Supremacy Clause. The history of those constitutional provisions as applied to Indian affairs proves that Tribes are indeed "sovereigns pre-dating the constitution." *United States v. State of Or.*, 657 F.2d 1009, 1013 (9th Cir. 1981). As such, respecting tribal sovereignty is manifested by state and federal courts having respect for tribal courts, and individuals like Becker litigating their claims in those courts, even when, and especially when, they are unwilling to do so. To allow otherwise desecrates the rule of law in the United States while simultaneously flouting Congressional policy that commands respect for tribal sovereignty.

CONCLUSION

As an extraordinary remedy, under Federal Rule of Civil Procedure 65, preliminary injunctions are not to be issued on a whim. Moreover, "an injunction can issue only if each factor is established." *Denver Homeless Out Loud*, F.4th at 1277. Here, for reasons stated above, Becker cannot establish any of the four factors, and his Motion for Preliminary Injunction should be denied. Aside from Becker's failure to establish a single factor in his favor supporting his requested relief, Becker's Motion must also be denied for failing to comply with the mandates regarding tribal court exhaustion issued in *Becker II* and *Becker III*. Beyond a mere matter of principle in respecting tribal sovereignty, the

Supreme Court explained the very real practical concerns regarding the importance of tribal court exhaustion:

> The orderly administration of justice in the federal court will be served by allowing a full record to be developed in the Tribal Court before either the merits or any question concerning appropriate relief is addressed. The risks of the kind of "*procedural nightmare"* that has allegedly developed in this case will be minimized if the federal court stays its hand until after the Tribal Court has had a full opportunity to determine its own jurisdiction and to rectify any errors it may have made. Exhaustion of tribal court remedies, moreover, will encourage tribal courts to explain to the parties the precise basis for accepting jurisdiction, and will also provide other courts with the benefit of their expertise in such matters in the event of further judicial review.

National Farmers Union Ins. 471 U.S. at 857. (Emphasis added) (internal citations omitted). Becker through his vexatious litigation has subjected the Tribe to this exact "procedural nightmare" the Supreme Court warned about for years now. This seemingly never-ending procedural nightmare must end, and as Judge Pechota said, "the time has come to resolve the merits of the action [in Tribal Court]." October 31, 2023, *Tribal Court Order* at 7. Accordingly, Becker's Motion for Preliminary Injunction must be denied.

In addition, for the reasons set out above, the Tribal Defendants seek a security bond under Fed.R.Civ.P. 65(c) in an amount of $250,000.00.

DATED this 2nd day of September, 2025.

J. PRESTON STIEFF LAW OFFICES. LLC

/s/ J. Preston Stieff

J. Preston Stieff

Attorney for Defendants