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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. Defendants.	**REPLY IN FURTHER SUPPORT OF MOTION TO DISMISS** Civil No. 2:25-cv-00643-DAK Senior Judge Dale A. Kimball Magistrate Judge Daphne A. Oberg

Defendants submit this reply in further support of their motion to dismiss (ECF 19).

I. Becker's representations about the Tribal Court's jurisdiction are false and his arguments are not colorable, serving only to vexatiously multiply these proceedings.

Becker states "Defendants' pivotal position [about Tribal Court jurisdiction] is demonstrably wrong." ECF No. 33 at pg. 1. However, casting aside Becker's mincing of the Tribal Court record and his omissions therefrom, a review of the record proves Becker is wrong.

In March 2017, the Tribal Court denied Becker's motion to dismiss based on a lack of jurisdiction. A copy of the 2017 Tribal Court decision was omitted from the attachments to the Verified Complaint (ECF 4-1—5-25) and is attached hereto as Exhibit A. The Tribal Court found "Becker consented to tribal jurisdiction by working for the Tribe" and "this Tribal Court has jurisdiction." Exhibit A at pg. 5.

In August 2017, the Tenth Circuit reversed a preliminary injunction issued by the District Court ordering the Tribe not to proceed with litigation in Tribal Court and held that "the [tribal court] exhaustion rule applies," remanding with instructions for the District Court to proceed consistent with the Tenth Circuit's opinion. *Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation*, 868 F.3d 1199, 1205 (10th Cir. 2017) ("*Becker II*").

Becker then filed a second Motion to Dismiss the Tribal Court suit on grounds that the Tribal Court lacked subject matter jurisdiction. (Becker Ex. 17, ECF 4-17). The Tribal Court issued a decision on February 28, 2018, confirming that it indeed has subject matter jurisdiction over the claims, thereby denying Becker's Motion to Dismiss for a second time. (Becker Ex. 19, ECF 4-19, pp. 4-5).

The Tribal Court suit, however, was put on hold once more after the Federal District Court denied the Tribe's injunction against the Utah State Court. *See Becker v. Ute Indian Tribe of the Uintah & Ouray Rsrv, et al.,* 311 F. Supp. 3d., 1284 (D. Utah 2018).

The Tribe again appealed the Federal District Court's decision and the Tenth Circuit once again reversed. *Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation*, 11 F.4th 1140 (10th Cir. 2021) ("*Becker III*"). Regarding the Tribal Court's issuance of the February 28, 2018, Order, the Tenth Circuit observed: "Since *Becker II* issued, the Tribal Court has determined that it has jurisdiction . . . ." This time the Tenth Circuit remanded "with directions to DISMISS Becker's pending federal action without prejudice pursuant to the tribal exhaustion rule." *Id.*

In the Tenth Circuit's final foray into the jurisdictional dispute between Tribal, State, and Federal court jurisdiction, it ruled that the Utah State Court lacks jurisdiction over the dispute between Becker and the Tribe because Becker's claims arose on the reservation and there was no congressionally authorized state-court jurisdiction over such claims. *See Ute Indian Tribe of the Uintah & Ouray Reservation v. Lawrence*, 22 F.4th 892 (10th Cir. 2022) (*Lawrence II*). After issuance of the *Becker III* and *Lawrence II* decisions, and exhaustion of appeals to the U.S. Supreme Court by Becker, the Tribal Court suit resumed once more.

Becker then filed what amounts to a third motion to reconsider the Tribal Court's Order finding that it has subject matter jurisdiction. The Tribal Court permitted supplemental authorities and briefing, and issued its Third Opinion on October 31, 2023, denying Becker's attempt to thwart Tribal Court subject matter jurisdiction. Becker Ex. 31, ECF 5-11. The Tribal Court determined, unequivocally, that it has subject matter jurisdiction, reasoning in part, that the Ute Tribal Court was established under the Ute Law and Order Code § 1-3-1(2) as "a court of general and civil criminal jurisdiction." *Id.* at 3. The Court

explained that it has "inherent and original jurisdiction over all matters of a judicial nature occurring within its territorial boundaries," which is consistent with the findings in federal court that the Becker matter arose within the boundaries of the Reservation. *Id*. Becker Ex. 31, ECF 5-11 at pg. 1.

II. Becker's exhaustion claims are incorrect.

Becker states "correcting this pivotal falsehood [regarding the Tribal Court's jurisdiction] guts the Tribe's exhaustion claims." ECF No. 33 at pg. 2. However, correcting *Becker's* false claims about the Tribal Court's jurisdiction guts his exhaustion claims. The Tribal Court has upheld its jurisdiction at least three times, and its jurisdiction has been recognized by federal courts. *See supra* at 2 (discussing *Becker II* and *Becker III*). *Becker III* dismissed Becker's prior federal court complaint as he has not yet exhausted Tribal Court remedies on appeal. *Becker III* at 1150 (quoting *Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9, 17,* (1987). If Becker's exhaustion claims had merit, the Tenth Circuit in *Becker II* or *Becker III* would have held so.

Becker's exhaustion claims also improperly seek to collaterally attack prior jurisdictional rulings from the Tenth Circuit regarding tribal court exhaustion. These rulings are res judicata and collateral attacks in subsequent proceedings are barred. *Park Lake Resources Ltd. Liability Co. v. U.S. Dept of Agric*., 378 F.3d 1132, 1136 (10th Cir. 2004) ("Plaintiffs cannot now present an argument that conflicts with our earlier [jurisdictional] decision.")

Becker states he agrees with "the Tribe's concession that after exhaustion this Court has jurisdiction to review the tribal court proceedings." ECF No. 33 at pg. 3. But any

appeal from the Tribal Court is limited to the jurisdictional question. *Becker III* at 1150. The sole issue in federal court is whether the Tribal Court exceeded a federally imposed limitation on Tribal Court jurisdiction. *See Iowa Mut. Ins. Co. v. LaPlante,* 480 U.S. 9, 18 (1987); *Nat'l Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 854 (1985).

Becker represents he has "fully exhausted his claims against the Tribe and the Tribe's exhaustion arguments fail." ECF No. 33 at pg. 3. Becker's position reads entire sections out of *Becker III*. For example, *Becker III* noted, "defendants [Becker] have not persuaded us that any of the narrow exceptions to the tribal exhaustion rule apply here" and "Becker has not yet obtained appellate review." *Becker III*. That finding has not changed as Becker still has not sought appellate review in Tribal Court—barring this action.

Becker argues the November 2024 Tribal Court decision now warrants a different result. Becker states, "the tribal court finally ruled that, because of Section 1-2-3(5), the tribal court lacks jurisdiction of Becker's counterclaims…." ECF No. 33 at pg. 2. However, in its November 2024 decision, the Tribal Court simply reiterated that "it had jurisdiction over defendant." Becker Ex. 20, ECF 4-20 at 1. This ruling contradicts Becker's entire jurisdictional argument. The November 2024 decision dismissed Becker's counterclaims *on the merits*—not on account of jurisdiction. Specifically, Becker's counterclaims were dismissed based upon sovereign immunity, statute of limitations, and failure to join the United States as a necessary party. *Id* at 9. These rulings on the merits of Becker's counterclaims are appealable to the Tribal Court of Appeals.

III. Becker's arguments fail under both facial and factual attacks.

a. Defendants' facial attacks have merit.

Becker argues that none of Defendants' challenges are facial and instead are all factual. ECF No. 33 at pg. 4. But this Court can look within the four corners of Becker's Complaint and recognize that it is facially infirm. Becker avoids addressing Defendants' arguments and instead dedicates one sentence to explain his position that "[t]hese arguments are non-starters because the starting factual premise – that the tribal court has jurisdiction of Becker's claims – is wrong." ECF No. 33 at pg. 4. Again, the record proves Becker is wrong.

As Defendants' Motion to Dismiss explained regarding the facial attacks to Becker's Complaint, this Court lacks Article III jurisdiction because Becker's suit is not a ripe case or controversy given the mandates of *Becker II* and *Becker III*. Because there is no ripe case or controversy under Article III, it tracks there is also no jurisdiction under the Declaratory Judgment Act codified in 28 U.S.C. § 2201(a). Becker's Complaint is also facially infirm given there is no federal question jurisdiction, as Becker's contract and tort disputes do not present questions of federal law.

b. Defendants' factual attacks have merit.

Becker's arguments about Defendants' factual attacks are devoid of merit. Becker states "facts supporting a factual attack must be real facts." ECF No. 33 at pg. 4. He then explains what "real facts" are, for example, those supported by "affidavits…" *Id.* (Citations omitted). Becker fails to consider the Tribe's attorney, Frances Bassett, filed an affidavit in support of Defendants' Motion to Dismiss. ECF No. 19, Ex. 10.

Becker claims "Defendants do not explain what issues in the Verified Complaint are the same issues that Becker lost in those appeals." ECF No. 33 at pg. 5. Defendants have explained multiple times how Becker already lost his arguments on tribal court exhaustion in *Becker II* and *Becker III*. Further, most of Becker's Complaint contains immaterial, impertinent, prejudicial, and scandalous allegations related to events occurring *before Becker III* was issued. Defendant Ute Energy Holdings, LLC's Motion to Strike, ECF. No. 17. The Tenth Circuit already considered these same pre-2021 allegations of bad faith and rejected them.

Finally, Becker rests his entire Complaint on two new factual allegations he claims distinguish this attack on Tribal Court jurisdiction from all the others: alleged "manipulation" of the schedule due to the death of Ms. Bassett's mother, (ECF No. 2 at ¶ 92) and alleged ex parte communications (*Id*. at ¶ 89). Both are baseless.

The first false allegation of "manipulation" was addressed in Ms. Bassett's Declaration in support of Motion to Dismiss (ECF No. 19-10 at ¶¶ 10-11) and in Defendants' Response to Motion for Preliminary Injunction (ECF No. 21 at pp. 4-5).

The second allegation is that the Tribal attorneys engaged in ex parte communications with the Tribal Court. ECF 2 at ¶ 89. This is also false.

Attorney Fenner sought to reschedule the original dates set for trial to be held in-person at the Ute Indian Tribal Court located in Ft. Duchesne, Utah. Exhibit B at ¶¶ 4-5. While working with Attorney Isom to reset the dates, Attorney Fenner's legal assistant contacted Judge Pechota's clerk and was informed that Judge Pechota would prefer to avoid air travel during the spring months when inclement weather over the Northern

Plains frequently grounds flights. *Id.* at ¶ 6. When Attorney Fenner conveyed this information, Attorney Isom accused him of engaging in ex parte communications, an accusation immediately denied. *Id.* at ¶ 7. It was explained to Attorney Isom at that time that Attorney Fenner's legal assistant had contacted chambers and had received this information from the Judge's clerk. *Id.* These baseless allegations lay the bad faith at the feet of Becker and not Defendants.

IV. The Tribe and the Business Committee have not been served.

Becker claims service was proper on the Tribe and the Business Committee because he filed certificates of service. ECF No. 33 at pg. 6. But Becker did not serve all members of the Tribe's Business Committee as required to effectuate service on the Tribe. Federal Rule of Civil Procedure 4 defines how to serve nearly every person or entity, but it does not contain any rule specifying the method of service for service upon a Tribe. The only law that provides a lawful method for serving the Ute Indian Tribe is the Tribe's law. Under Ute tribal law, service on the Tribe is only accomplished by service on all six members who indivisibly hold the Tribe's executive power. A copy of this Ordinance is attached as Exhibit C. *See* Ordinance. No. 22-002(2)(b)(8); *cf* F.R.C.P. 4(i) (to validly serve the United States or an officer of the United States, a party must serve multiple federal officers); F.R.C.P (4)(j) (to validly serve a state, or local government, service is on the executive.) There are two subsections of F.R.C.P. 4 which apply to governments: FRCP 4(i) and 4(j). Neither 4(i)[1] nor 4(j)[2] nor any other subpart of Rule 4

[1] FRCP 4(i) applies to service on the United States.
[2] FRCP 4(j) defines the method of service on foreign governments and states. In some statutes Congress defines "state" to include federally recognized Indian tribes, but in

applies to tribal governments.[3]

There is no case from any federal court which holds that service on a Tribe comes under FRCP 4(h), (i), (j) or any other subpart of FRCP 4, and the plain language in FRCP 4 does not specify the method for serving Tribes. But the Tribe developed law governing service on the Tribe which is consistent with the Tribe's Constitution and history. The Tribe's Business Committee, not any individual member thereof, is the Tribes' executive and legislative body. The Tribe does not have an individual chief executive; and the powers of the Committee are retained by that collective group. Ute Const. ART. VI § 1. The Tribe, not the United States, determines the structure of its government, and it has provided executive power collectively to its Business Committee. At least in the current context, where there is no federal law to the contrary, the Tribe's laws require service on all six members of the Tribe's Business Committee, and Becker thus failed to properly effectuate service on the Tribe and the Business Committee in this case.

Becker also failed to comply with proper permitting requirements for service under Ute tribal law. Tribes have the "'traditional and undisputed power to exclude persons' from tribal land." *Plains Commerce Bank v. Long Family Land & Cattle Co*., 554 U.S. 316, 335 (2008) (quoting *Duro v. Reina*, 495 U.S. 676, 696 (1987)). Consistent with that

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FRCP 4(j)(2) and FRCP 81(d)(2), the term "state" is defined to exclude tribes. 28 U.S.C. § 1603 defines "Foreign governments" for purposes of the FRCP 4(j), and similarly excludes tribes from the definition.

[3] The basic rule of statutory construction here is expression or inclusion of one thing is exclusion of others. *E.g.*, 82 C.J.S. Statutory Construction § 421. Because Rule 4(i) and (j) contain provisions related to some governments, but not to tribal governments, that exclusion is interpreted as intentional.

power, Tribes can condition entry on an outsider obtaining a license, as the Tribe did in Ordinance. No. 22-002(2)(b)(4) (requiring a Tribal business license and access permit to serve process on the Reservation). Becker did not work with a process server who had these prerequisite licensures, so service on the Tribe and Business Committee is invalid.

V. The Court is bound by the Tribal Court's rulings.

Becker again makes the hollow assertion "the tribal court lacked jurisdiction", to argue this Court is not bound by the rulings of the Tribal Court, and he states the purpose of this Court's review is to "determine whether the tribal court's rulings were correct." ECF No. 33 at pg. 6. This is an incorrect statement of law and fact because the sole issue in federal court is whether the tribal court exceeded a federally imposed limitation on tribal court jurisdiction. *See Iowa Mut. Ins.,* 480 U.S. at 18; *Nat'l Farmers Union Ins. Companies* 471 U.S. at 854. The Tribal Court has found multiple times it has not exceeded any federally imposed limitation on its jurisdiction. *Supra* at 2. If Becker disagrees, pursuant to the *Becker II* and *Becker III* mandates, he must appeal those first to the Tribal Appellate Court before coming to this Court. Moreover, this Court should disregard Becker's reference to *Ute Indian Tribe v. Lawrence,* 312 F. Supp 3d 1219, 1225, 1240-44 (D. Utah 2018), as it is dicta in a case that was reversed and remanded by the Tenth Circuit in *Ute Indian Tribe of the Uintah & Ouray Rsrv. v. Lawrence*, 22 F.4th 892 (10th Cir. 2022).

Becker's arguments in section VII (ECF 33 at pgs. 7-8) regarding Defendants' Rule12(b)(6) motion are meritless as they hinge on the validity of the purported Independent Contractor Agreement held to be "void under both federal and tribal law." *Becker III* at 1150. Courts may not be consigned to assist "in any way towards carrying

out the terms of an illegal contract." *Bartch v. Barch*, 111 F.4th 1043, 1063 (10th Cir. 2024) (quoting *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 77 (1982)). Any right of recovery must rest on the disaffirmance of the illegal contract—not its affirmance. *Pullman's Palace-Car Co v. Cent. Transp Co*, 171 U.S. 138, 145 (1898).

CONCLUSION

The Tribal Court has upheld its jurisdiction in at least three decisions, jurisdiction recognized *ad nauseum* by the Tenth Circuit. Because it is facially and factually deficient, fails to state a claim upon which relief can be granted, and because the Tribe and Business Committee have not been served, it is respectfully requested that the Complaint be dismissed with prejudice under F.R.C.P. 12(b) and 19.

Respectfully submitted this 15th day of October 2025.

J. PRESTON STIEFF LAW OFFICES, LLC

/s/ J. Preston Stieff
J. Preston Stieff

PATTERSON, REAL BIRD, AND RASMUSSEN LLP

/s/ Ethan Tourtellotte
Ethan Tourtellotte
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CERTIFICATE OF COMPLIANCE

I, Ethan Tourtellotte, pursuant to DUCivR 7-1(a)(6), certify that this "**REPLY IN FURTHER SUPPORT OF MOTION TO DISMISS"** contains 2,903 words, and complies with the type-volume limitation of DUCivR 7-1(a)(4), excluding the parts of the Reply exempted by DUCivR 7-1(a)(6).