

David K. Isom (4773)  
 ISOM LAW FIRM PLLC  
 358 South 700 East  
 Suite B-123  
 Salt Lake City, Utah 84102  
 Telephone: (801) 209 7400  
 david@isomlawfirm.com  
 Attorney for Plaintiff Lynn D. Becker

---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**

|                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Lynn D. Becker,<br/> <br/>           Plaintiff,<br/> <br/>           vs.<br/> <br/>           Ute Indian Tribe of the Uintah and<br/>           Ouray Reservation, a federally<br/>           recognized Indian tribe; the Uintah and<br/>           Ouray Tribal Business Committee, and<br/>           Ute Energy Holdings, LLC, a Delaware<br/>           LLC,<br/> <br/>           Defendants</p> | <p><b>PLAINTIFF'S MOTION FOR<br/>           PRELIMINARY INJUNCTION</b><br/> <br/> <b>Civil No. 2:25-cv-00643-DAK</b><br/> <br/> <b>Judge: Dale A. Kimball</b></p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Plaintiff Lynn D. Becker ("Becker") moves pursuant to Fed. R. Civ. P. 65 for a preliminary injunction: (1) determining that Becker has no further duty to exhaust remedies in the action pending in the Ute Tribal Court ("Tribal Court Action"); (2) ordering the defendants here (jointly "Tribe") to stop prosecuting the Tribal Court Action; and (3) staying the Tribal Court Action.

**SUMMARY**

The Tribe's filing of the Tribal Court Action was a frivolous, bad faith attempt to harass Becker because the Tribe knew when it filed the Tribal Court Action that a plain

tribal ordinance prohibited the tribal court from jurisdiction of Becker's claims.

The tribal court acted in bad faith in conspiracy with the Tribe by purporting to exercise jurisdiction over Becker's claims for six years after Becker showed the tribal court in February 2018 that Section 1-2-3(5) of a tribal ordinance plainly prohibited such jurisdiction.

## **BACKGROUND**

This action arises from the Independent Contractor Agreement attached here as Exhibit 1 by which the Tribe agreed to pay Becker for services performed.

This litigation has been in federal, state and/or tribal trial and appellate courts for more than 12 years.<sup>1</sup> Becker filed the First Federal Action in February 2013<sup>2</sup> and then the State Court Action in December 2014.<sup>3</sup> The Tribe filed the Second Federal Action in June 2016<sup>4</sup> and then the Tribal Court Action in August 2016.<sup>5</sup> Becker then filed the Third Federal Action in September 2016.<sup>6</sup>

When the Tribe filed the Tribal Court Action nine years ago, the Tribe knew that the tribal court was expressly prohibited by tribal law from adjudicating Becker's claims.<sup>7</sup> Section 1-2-3(5) of the Ute Tribe Law & Order Code provides: "The Courts of the Ute Indian Tribe shall not have jurisdiction to hear claims against the Ute Indian Tribe ...."<sup>8</sup>

---

1 Facts 28-37, 39, 41-48, 50-53. "Fact \_" refers to facts alleged in the Verified Complaint and to the exhibits referred to and authenticated in those fact statements. For example, "Fact 1" refers to paragraph 1 of the Verified Complaint and to the Resolution and Independent Contractor Agreement attached as Exhibit 1 to the Verified Complaint.

2 Facts 28-30.

3 Facts 31-36.

4 Facts 37 & 39.

5 Facts 40-48.

6 Facts 50-53.

7 Facts 47-48, 55-59, 78-82.

8 Fact 47.

The filing of the Tribal Court Action was done in bad faith to harass Becker and has caused a delay of at least nine years and substantial harm to Becker.<sup>9</sup>

For the nine years since the Tribe filed the Tribal Court Action, the Tribe has tried to delay resolution. The only time the Tribe tried to move quickly was during the three months from December 2017 through February 2018 when the Tribe filed expedited motions to try to get tribal court rulings that would create preclusion binding in the then-pending State Court Action and Second and Third Federal Actions.<sup>10</sup>

Becker, however, has now established these three exceptions to any exhaustion requirement:

- (1) The Tribal Court Action is patently violative of the express jurisdictional prohibition of Section 1-2-3(5) of the Ute Tribe Law & Order Code;
- (2) It is now clear that the tribal court lacks jurisdiction so that the exhaustion requirement would serve no purpose other than delay; and
- (3) The assertion of tribal jurisdiction is motivated by a desire to harass Becker and is being conducted in bad faith.

This Motion shows that these requirements for a preliminary injunction<sup>11</sup> are satisfied: (1) there is a substantial likelihood of Becker succeeding in showing that these exceptions destroy any further exhaustion duty; (2) Becker will suffer irreparable harm if the relief is denied; (3) the threatened injury outweighs any harm that the injunction may cause to the Tribe; and (4) the injunction, if issued, will not adversely affect the public interest.

---

9 Facts 40, 47-48, 55-60.

10 Facts 55-59.

11 *E.g., UHS of Provo Canyon, Inc, v. Bliss*, 2024 U. S. LEXIS 173244 \*47-48 (D. Utah, Sept. 24, 2024).

## FACTS

a. Section 1-2-3(5) of the Ute Indian Tribe Law & Order Code provides: "The Courts of the Ute Indian Tribe shall not have jurisdiction to hear claims against the Ute Indian Tribe...." ("Section 1-2-3(5)").<sup>12</sup>

b. 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.<sup>13</sup>

c. Thus, it is now clear that any further exhaustion in the tribal court would serve no purpose other than delay.<sup>14</sup>

d. The tribal court is motivated by a desire to harass Becker and is conducting the Tribal Court Action in bad faith.<sup>15</sup>

e. For example, in late 2017 the tribal court terminated Judge Thomas Weathers, the original tribal judge, when Judge Weathers made decisions that partially benefitted Becker, including Weathers' refusal to enter a stay that the Tribe wanted and Becker opposed.<sup>16</sup>

f. Tribal court chief judge Thelma Stiffarm assigned herself as the judge in the Tribal Court Action for a few days, just long enough to reverse Judge Weathers and issue the stay the Tribe requested.<sup>17</sup>

g. On January 16, 2018, the tribal court appointed Judge Terry Pechota to the

---

12 Fact 47, 54-56, 58-60.

13 Facts 47-48, 55-60, 80-84.

14 Facts 47-48, 55-60, 80-84.

15 Facts 63-93.

16 Facts 65-72.

17 Facts 73.

case.<sup>18</sup>

h. Throughout his tenure, Judge Pechota has conspired with the Tribe to defeat Becker's rights and claims and to assure that any ruling favorable to Becker was postponed for years.<sup>19</sup>

i. On February 22, 2018, Becker filed a motion to dismiss his own counterclaims because of the prohibition of Section 1-2-3(5) depriving the tribal court of jurisdiction to adjudicate those claims.<sup>20</sup>

j. On February 26, 2018, the Tribe filed a response to Becker's February 22 motion, agreeing that Section 1-2-3(5) prohibited tribal court jurisdiction of Becker's claims.<sup>21</sup>

k. Despite the agreement of all parties that Section 1-2-3(5) deprived Judge Pechota of jurisdiction to do so, Judge Pechota purported to exercise jurisdiction of Becker's claims from 2018 through 2024, delaying resolution of this dispute for years and causing Becker enormous harm.<sup>22</sup>

l. On February 28, 2018, within two months of his appointment, Judge Pechota, on the expedited schedule that the Tribe demanded, and with no new fact or law, reversed every ruling of Judge Weathers that had favored or partially favored Becker ("Pechota's February 28, 2018 Order").<sup>23</sup>

m. Judge Pechota made this expedited ruling on February 28, 2018 to support

---

18 Fact 74.

19 Facts 74-88, 94.

20 Fact 78.

21 Fact 80.

22 Fact 78-84.

23 Fact 57, 81-83.

the Tribe in trying to preclude issues soon to be decided in the federal and state courts.<sup>24</sup>

n. The Tribal Court Action was stayed by this Court from 2018 through 2021.<sup>25</sup>

o. During that time, this Court rejected every substantive ruling of the tribal court (312 F. Supp. 3d 1219 (D. Utah 2018)). The following table compares these rulings of this Court to the rulings of Pechota's February 28, 2018 Order:<sup>26</sup>

| Issue                                     | A. Judge Weathers' Rulings                                                                                         | A. Judge Pechota's Rulings                                                                                                                                                                 | B. Federal Court                                                                                                                                             |
|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Secretarial Approval                      | Genuine issues of material fact prevented summary judgment on this issue.                                          | To be valid, the Agreement was required to have been approved by the U.S. Secretary of the Interior. Since no approval was sought or given, the Agreement is void ab initio.               | Because the Agreement did not involve trust property, Secretarial approval was not required.                                                                 |
| Voidness of Agreement                     | Genuine issues of material fact prevented summary judgment on this issue.                                          | The Agreement is void ab initio.                                                                                                                                                           | The Agreement is valid.                                                                                                                                      |
| Waiver of Sovereign Immunity Was Void     | Genuine issues of material fact prevented summary judgment on this issue.                                          | Because the Agreement is void, the Tribe's contractual waiver of sovereign immunity is ineffective.                                                                                        | Because the Agreement is valid, the Tribe's contractual waiver of sovereign immunity is effective.                                                           |
| Four Corners Waiver of Sovereign Immunity | The Business Committee's resolution incorporating by reference the Tribe's waiver of sovereign immunity was valid. | Because the resolution approving the Agreement failed to express the waiver of sovereign immunity within the four corners of the resolution, the waiver of sovereign immunity was invalid. | Judge Pechota's four corners ruling was clear error – the resolution's incorporation by reference of the Agreement's waiver of sovereign immunity was valid. |
| Waiver of Tribal                          |                                                                                                                    | Judge Pechota did not expressly address                                                                                                                                                    | By the Agreement, the Tribe clearly waived                                                                                                                   |

24 Facts 76 & 77.

25 Facts 46.

26 Fact 57, 81-83.

|                  |  |                                                                                                                                                          |                                                                                              |
|------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| Court Exhaustion |  | tribal court exhaustion but appears to have intended that the Agreement's clear waiver of tribal court exhaustion was invalid if the Agreement was void. | any duty to exhaust remedies in either the tribal trial court or the tribal appellate court. |
|------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|

p. Since the litigation returned to the tribal court in 2021, Judge Pechota has refused to reconsider any of the rulings in Pechota's February 28, 2018 Order in favor of the Tribe, including any of those issues rejected by this Court.<sup>27</sup>

q. When the litigation returned to the tribal court pursuant to the Tenth Circuit's exhaustion order, Judge Pechota continued to delay dismissing Becker's claims for lack of jurisdiction under Section 1-2-3(5) so that he could continue to control those claims.<sup>28</sup>

r. More than six years after Becker's February 22, 2019 motion to dismiss his claims for lack of jurisdiction based upon Section 1-2-3(5), the tribal court finally dismissed Becker's claims on November 26, 2024 for lack of jurisdiction pursuant to Section 1-2-3(5).<sup>29</sup>

s. The Tribal Court engages in *ex parte* communications with the Tribe about this litigation. For example, in early 2025, when Becker was trying to schedule the earliest possible trial date, the Tribe's counsel informed Becker's counsel that both the Tribe's counsel, who lived in Washington, D.C., and Judge Pechota, who lived in South Dakota,

---

27 Facts 86.

28 Facts 86-87.

29 Facts 86-88.

wanted to wait until summer for trial because Judge Pechota and the Tribe's counsel did not want to fly through Chicago's O'Hare airport while there was a risk of snowy weather.<sup>30</sup>

t. The tribal court has consistently granted the Tribe's scheduling requests. For example, on March 20, 2025, the Tribe moved to vacate the trial and remaining pre-trial procedures. In less than an hour, and before Becker had seen the motion or been able to respond, Judge Pechota canceled the trial and all scheduled remaining pretrial procedures. No new trial date has been set.<sup>31</sup>

u. Because the tribal court has conspired with the Tribe to assure that the Tribe prevails and that Becker's claims and defenses are defeated, the Tribe's bad faith and harassment are relevant to the bad faith exception to any exhaustion requirement.<sup>32</sup>

v. The Tribe's filing of the Tribal Court Action constituted bad faith harassment of Becker because the Tribe knew when it filed the Tribal Court Action that the tribal court lacked jurisdiction of Becker's claims.<sup>33</sup>

w. The Tribe has so threatened and harassed potential witnesses in bad faith that Becker has been deprived of a fair opportunity to call material witnesses that he anticipates will be needed in these proceedings.<sup>34</sup>

x. To intimidate Becker and his counsel, the Tribe has in bad faith falsely accused a federal judge and a state judge and Becker's counsel David Isom of racism and racial prejudice against the Tribe.

---

30 Fact 89.

31 Fact 92.

32 Facts 83, 94-95.

33 Facts 47-48; 54-59; 97.

34 Facts 98-125.

## ARGUMENT

A preliminary injunction should be granted upon a showing that (1) the movant is “likely to prevail on the merits,” (2) the movant is “likely to suffer irreparable harm in the absence of preliminary relief,” (3) “the balance of equities tips in [the movant’s] favor,” and (4) “an injunction is in the public interest.”<sup>35</sup> This Motion satisfies these requirements.

**I. Becker Is Likely to Succeed in Showing that No Further Exhaustion Duty Exists**

Under 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.<sup>36</sup> This rule, known as exhaustion of tribal court remedies, is not jurisdictional but comity-grounded in the federal policy of promoting tribal self-government.<sup>37</sup>

This exhaustion rule, however, is limited by several well-recognized exceptions.<sup>38</sup> Where any such exception is shown, there simply can be no exhaustion duty.<sup>39</sup>

Becker is likely to succeed on the merits of establishing that the tribal court proceedings are barred by the following three well-established exceptions to any exhaustion duty.

---

<sup>35</sup> *M.G. through Garcia v. Armijo*, 117 F.4th 1230, 1238 (10th Cir. 2024); *Ute Indian Tribe v. Lawrence*, 22 F.4<sup>th</sup> 892, (10<sup>th</sup> Cir. 2022); *Utah Vapor Business Ass’n Inc.*, 2025 U.S. LEXIS 80525 (D. Utah, Mar. 24, 2025).

<sup>36</sup> *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 857 (1985).

<sup>37</sup> *Chegup v. Ute Indian Tribe*, 28 F.4th 1051, 1060 (10th Cir. 2022).

<sup>38</sup> *Chegup v. Ute Indian Tribe*, 28 F.4th 1051, 1061 (10th Cir. 2022); *Norton v. Ute Indian Tribe*, 862 F.3d 1236, 1243 (10th Cir. 2017).

<sup>39</sup> *Chegup*, 28 F.4th at 1061; *Encana Oil & Gas (USA) Inc. v. St. Clair*, 2012 U.S. Dist. LEXIS 191566 \*14 (D. Wyo., April 17, 2012) (where exhaustion would otherwise be required, there can be no exhaustion duty if an exception is established).

**A. The Tribal Court Action Is Patently Violative of the Express Jurisdictional Prohibition of Section 1-2-3(5) of the Ute Tribe Law & Order Code**

No further tribal court exhaustion can exist once it is established that such jurisdiction patently violates express jurisdictional prohibitions.<sup>40</sup> The Tribe Court Action here squarely and patently violates the express and unambiguous prohibition of Section 1-2-3(5) of the Ute Tribe Law & Order Code: ““The Courts of the Ute Indian Tribe shall not have jurisdiction to hear claims against the Ute Indian Tribe ....”

Because 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. Section 1-2-3(5) single-handedly requires this Court to terminate any further exhaustion in the Ute tribal court.

**B. It Is Clear that the Tribal Court Lacks Jurisdiction so that any Exhaustion Requirement Would Serve No Purpose Other than Delay**

Section 1-2-3(5) also satisfies the next exception to exhaustion – that exhaustion ends when it becomes clear that any further exhaustion “would serve no purpose other than delay.”<sup>41</sup> Section 1-2-3(5) makes it clear that the tribal court lacks jurisdiction of Becker’s claims. Where, as here, a tribal court clearly lacks jurisdiction over a party’s claims, the exhaustion requirement would serve no purpose, and there is no need to require further tribal court litigation before the exercise of federal jurisdiction.<sup>42</sup>

---

40 *Burrell v. Armijo*, 456 F.3d 1159, 1168 (10<sup>th</sup> Cir. 2006) (quoting *Nat’l Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 857 U.S. at 857 n. 21).

41 *Burrell v. Armijo*, 456 F.3d 1159, 1168 (10th Cir. 2006) (quoting *Nevada v. Hicks*, 533 U.S. 353, 369 (2001)).

42 *Thlophlocco Tribal Town v. Stidham*, 762 F.3d 1226, 1238 (10<sup>th</sup> Cir. 2014).

**C. The Assertion of Tribal Court Jurisdiction Here Is Motivated by a Desire to Harass Becker and Is Being Conducted in Bad Faith**

Any exhaustion duty ends where, as here, a party shows that an assertion of tribal court jurisdiction “is motivated by a desire to harass or is conducted in bad faith.”<sup>43</sup>

Because exhaustion is a prudential rule grounded in comity and in respect for tribal government and independence, and is not jurisdictional, the right and duty of tribal court exhaustion disappears if a tribal court is conducting the action in bad faith and is motivated by the tribal court’s desire to harass a party.<sup>44</sup> Though the mere bias of a tribal court judge does not rise to the level of an exception to an exhaustion requirement,<sup>45</sup> the sustained, brazen, transparent harassment and bad faith of the tribal court that is so obvious here destroys any exhaustion right or duty that might otherwise have existed.

Though the bad faith exception language of *National Farmers* does not specify whose bad faith is relevant to the exception, the Tenth Circuit has held that it is the bad faith of the tribal court that matters.<sup>46</sup> Where the tribal court actively conspires with a tribe to deprive a non-member party of his civil and contractual rights, however, the tribe’s bad faith is also charged to the bad faith of the tribal court.<sup>47</sup>

This section shows that the tribal court is acting in bad faith to harass Becker and then that the Tribe’s bad faith is charged to the tribal court because the tribal court is conspiring with the Tribe to deprive Becker of important claims, defenses and rights.

---

43 *National Farmers Union Ins. Cos v. Crow Tribe of Indians*, 471 U.S. 845, 857 (1985).

44 *Norton v. Ute Indian Tribe*, 862 F.3d 1236, 1249 (10th Cir. 2017).

45 *Id.*

46 *Id.*

47 *Zero Down Supply Chain Solutions, Inc. v. Global Transp. Solutions, Inc.*, 2008 U.S. Dist. LEXIS 84722 \*26-27 (D. Utah, Oct. 16, 2008) (“each member of the conspiracy is liable for the acts of his or her coconspirators”).

## 1. The Tribal Court Is Acting in Bad Faith to Harass Becker

The tribal court terminated tribal court judge Thomas Weathers when he ruled against the Tribe and then failed to reconsider and reverse his rulings on the expedited schedule that the Tribe demanded.<sup>48</sup> The tribal court by chief judge Thelma Stiffarm then, without any new evidence, motion or other reason, reversed Judge Weathers and granted the stay that Judge Weathers had rejected.<sup>49</sup>

Judge Stiffarm then appointed Terry Pechota as the replacement tribal judge.<sup>50</sup> Within 24 hours of Judge Pechota's appointment, and without any new law or fact, the Tribe filed a motion for reconsideration of all the issues that Judge Weathers had failed to rule in the Tribe's favor.<sup>51</sup>

Less than two months later, on February 28, 2018, Judge Pechota completely rejected and reversed Judge Weathers' rulings ("Pechota's February 28 Order"). Judge Pechota's February 28 Order held that the Agreement was void because it had not been approved by the U.S. Secretary of the Interior ("Secretarial Approval Claim").<sup>52</sup> The order further ruled that the waiver of tribal sovereign immunity was ineffective because the waiver language was not included within the four corners of the resolution approving the Agreement, but was only in the Agreement itself which the resolution incorporated by reference ("Four Corners Claim").<sup>53</sup>

Pechota's February 28 Order adjudicated the major issues of Becker's counterclaims despite Becker's motion to dismiss his own counterclaims and the Tribe's

---

48 Facts 65-74.

49 Facts 73-74.

50 Fact 74.

51 Fact 75.

52 Facts 75-84.

53 Fact 83.

agreement that Section 1-2-3(5) of Title 1, Ute Indian Law & Order Code Amended and Restated, Ordinance No. 13-010 Ordinance 13-010 of the Ute Tribe Law & Order Code (“Section 1-2-3(5)”) plainly deprived the tribal court of jurisdiction to adjudicate Becker’s claims: “The Courts of the Ute Indian Tribe shall not have jurisdiction to hear claims against the Ute Indian Tribe … or the Tribal Business Committee....”<sup>54</sup>

Though on the day Becker served and filed his Section 1-2-3(5) motion to dismiss Judge Pechota confirmed receipt of Becker’s motion, Judge Pechota later denied having received it.<sup>55</sup>

So that he could continue to control Becker’s claims, Judge Pechota continued to dismiss Becker’s claims when the dispute was returned to the tribal court by the Tenth Circuits’ remand and exhaustion order. In orders dated October 31, 2023 and November 7, 2023, Judge Pechota continued to refuse to dismiss Becker’s counterclaims for lack of jurisdiction despite the plain prohibition of Section 1-2-3(5).

Judge Pechota finally dismissed Becker’s counterclaims for lack of jurisdiction based on Section 1-2-3(5) on November 26, 2024, more than six years after Becker had moved and the parties had agreed that Section 1-2-3(5) prohibited tribal court jurisdiction of Becker’s claims.

In the nine years since the Tribal Court Action was filed, Judge Pechota has obeyed the Tribe’s every scheduling request. The February 2018 ruling was hurried because the Tribe told Judge Pechota that it hoped to create preclusion binding upon the federal and state court, even if the Tribe itself were enjoined by this Court from proceeding in the tribal court. Since then, Judge Pechota has consistently granted the Tribe’s

---

54 Facts 47, 54-60, 78-83 & 87.

55 Facts 78-79.

requests to delay resolution of the Tribal Court Action.

For example, in February 2018 Judge Pechota ignored the plain language of Section 1-2-3(5) that should have ended the Tribal Court Action then. Instead, though Judge Pechota had confirmed receipt of Becker's February 20, 2018 motion based upon Section 1-2-3(5), Judge Pechota failed even to address the issue.

**2. Because the Tribal Court and Tribe Are Actively Conspiring, the Tribe's Bad Faith Harassment of Becker Is Charged to the Tribal Court**

The tribal court's actions here are way beyond local bias or incompetence. As the above shows, the tribal court is actively and demonstrably conspiring with the Tribe to harass Becker in bad faith. All five elements of conspiracy<sup>56</sup> are manifest here: (1) there is a combination of two or more entities or persons; (2) aimed at depriving Becker of vital common law, contractual and civil rights; (3) with an obvious meeting of the minds on the object or course of action; (4) with unlawful, overt acts; and (5) proximate resulting damage. The Tribe's bad faith is therefore charged to the tribe for the purpose of establishing a bad faith exception to any further exhaustion duty.

The Tribe's relevant bad faith includes (1) filing the Tribal Court Action when the Tribe knew that its own clear laws plainly prohibited such jurisdiction;<sup>57</sup> (2) manipulating the scheduling of deadlines in the Tribal Court Action to hurry the process in late 2017 and early 2018 to try to scoop issues in the pending federal and state court actions and then slowing the process thereafter to try to outlast Becker;<sup>58</sup> (3) ex parte communications between the Tribe and the tribal court; (4) making baseless charges of racism against the

---

56 See, e.g., *Lawrence v. Intermountain, Inc.*, 243 P.3d 508, 513 (Utah App. 2010).

57 Facts 40-49, 97.

58 Facts 89, 90-93.

state and federal judges assigned to the case and against Becker's counsel;<sup>59</sup> and (5) the Tribe's blatant, intentional and illegal harassment of material witnesses has interfered with Becker's right to subpoena and call material witnesses.<sup>60</sup>

## **II. The Preliminary Injunction Is Needed to Prevent Irreparable Harm**

Becker will be irreparably harmed by the continuation of the Tribal Court Action. 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.<sup>61</sup>

Moreover, Becker will be irreparably harmed by litigating in a court that has been shown to be acting in bad faith and conspiring with the Tribe to assure an outcome favorable to the Tribe on the timetable own choosing.<sup>62</sup> After 12 years, Becker faces the real prospect of the Tribe outlasting him and his resources unless this Court promptly ends the frivolous and outrageous prosecution of the Tribal Court Action..

## **III. The Injury to Becker Outweighs the Injury to the Tribe**

The injury to Becker from no injunction outweighs any harm to the Tribe from an injunction. Indeed, the Tribe faces no compensable harm from being required to defend claims in the forum the parties plainly agreed to in the thoroughly negotiated Agreement.<sup>63</sup>

## **IV. The Injunction Is in the Public Interest**

The public in general, and Indian tribes and people and companies that contract

---

59 Facts 126-133.

60 Facts 98-125.

61 See *JW Gaming Dev., LLC v. James*, 544 F. Supp. 903, 921 (N.D. Cal. 2021) (irreparable injury includes being deprived of a bargained-for forum in a court that lacks the power to provide any adjudication of a party's claims).

62 *Id.*

63 Facts 12-18, 26-27.

with Indian tribes specifically, have an interest in commercial relations with Indian tribes that are reasonable, predictable and profitable. These interests include the ability to determine how and in what forum contracts with Indian tribes may be enforced and to have confidence that disputes can be resolved quickly.

These interests will be furthered by the requested preliminary injunction. The injunction will expedite the resolution of a dispute that the parties agreed would not be litigated in tribal court and that, under tribal law, the tribal court had no jurisdiction to adjudicate.

It is in the public interest for Indian tribes and tribal courts to be prohibited from forcing people into tribal courts when clear tribal law provides that the tribal court lacks jurisdiction of a dispute and where contracts with tribes unambiguously guarantee that contracts will not be adjudicated in a tribal court. The Tribal Court Action, allowed to proceed, would infringe on this important public interest. "We reject [the tribal court's] contention that the injunction is against public policy because it impairs the authority of the tribal courts.... We simply are not persuaded that the exertion of tribal authority over [Becker], a non-consenting, nonmember, is in the public's interest."<sup>64</sup>

## **REQUEST**

Becker respectfully requests that the Court enter a preliminary injunction declaring that Becker has no further duty to exhaust tribal court remedies, enjoining the Tribe from proceeding with the Tribal Court Action, and staying the Tribal Court Action.

---

<sup>64</sup> *Crowe & Dunlevy*, 640 F.3d 1140, 1158 (10<sup>th</sup> Cir. 2011).

**CERTIFICATE OF NOTICE**

The undersigned certifies that on this 4<sup>th</sup> day of August, 2025, the foregoing was sent by email to the following attorneys for the defendants to provide notice that plaintiff would be seeking a preliminary injunction:

Ben Fenner, [bfenner@nativellawgroup.com](mailto:bfenner@nativellawgroup.com)

Thomasina Real Bird, [trealbird@nativellawgroup.com](mailto:trealbird@nativellawgroup.com)

Frances Bassett, [fbassett@nativellawgroup.com](mailto:fbassett@nativellawgroup.com)

/s/ David K. Isom

---