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**UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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CHELSEA FARRER AND CHAD YOUNG

Plaintiffs,

v.

WANEKA ROSEBUD CORNPEACH, in  
her individual capacity; JOHN DOES 1-5, in  
their individual capacity

Defendant(s).

**REPLY TO PLAINTIFFS' RESPONSE  
AND MEMORANDUM IN OPPOSITION  
TO DEFENDANT'S MEMORANDUM  
REGARDING FEDERAL QUESTION  
JURISDICTION**

Civil No. 2:25-cv-00551-JNP

Judge: Jill Parrish

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**REPLY TO PLAINTIFFS' RESPONSE AND MEMORANDUM IN OPPOSITION TO  
DEFENDANT'S MEMORANDUM REGARDING FEDERAL QUESTION  
JURISDICTION**

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Defendant Waneka Cornpeach ("Defendant"), by and through her attorneys, respectfully submits this Reply to "Plaintiffs' Response and Memorandum In Opposition to Defendant's

Memorandum Regarding Federal Question Jurisdiction.” For reasons discussed below, this Court should find that federal question jurisdiction exists, removal jurisdiction is proper, and in turn, grant Defendants’ requested declaratory relief.

### **ARGUMENT**

In Defendant’s motion to dismiss for lack of state court jurisdiction based upon federal Indian law, Defendant showed that the location of the alleged torts occurred on her Tribe’s Reservation. Defendant also showed that federal courts police the line between state and tribal jurisdiction. Specifically here, the Court bars a state court suit that infringes on the Tribe’s sovereign rights, including the Tribe’s rights to adjudication of claims arising on a Reservation.

The gist of Plaintiffs’ argument is that because they made a conclusory and false allegation based upon “information and belief” that alleged torts occurred off-Reservation, Compl. ¶2, this case is not removable. They do not provide any legal basis for that argument, and in fact the centerpiece of their argument is not even in the body of their brief. It is in footnote 2 of their response, where they claim, without any citation, that because they made a conclusory assertion that the alleged torts occurred off the Reservation, they do not need to respond to the Defendant’s undisputed and undisputable factual showing that showing that their allegation was blatantly false. They claim that this Court cannot consider the actual location of the alleged tort.

Contrary to their argument, for multiple reasons this Court is required to determine on the facts under the current record the jurisdictionally determinative fact of whether the alleged tort occurred on the Reservation. Here, the alleged tort occurred on the Reservation, and state court jurisdiction is barred by federal law.

#### **I. The well-pled complaint rule does not apply to Plaintiffs’ conclusory allegation of the jurisdiction in which the tort occurred.**

Plaintiffs’ primary argument is that based upon paragraph 2 of their complaint, the “well pled”

fact is that the alleged tort occurred off-Reservation. Their argument against infringement and their argument that they can bring claims based upon “state law” are both dependent upon their assertion that this Court cannot look behind their (false) allegation that the alleged torts occurred off-Reservation. Their argument is wrong for nearly innumerable reasons.

This Court does not even need to turn to the federal Indian law issues presented in this matter in order to reject Plaintiffs’ argument. There simply is not a “well pled” allegation that the offense occurred off-Reservation. A “well pled complaint” must allege facts showing the jurisdiction in which the alleged tort occurred. Under U.R.C.P. 9(g), an “allegation of time or place is material when testing the sufficiency of a pleading.” F.R.C.P. 9(f) is identical. Here, Plaintiffs did not make any allegation of facts regarding the location. They only make a conclusory statement, without any facts, that the torts occurred off- Reservation. Their complaint can be dismissed on that basis alone. *Cook v. Kulijian Corp.*, 137 F. Supp. 833 (E.D. Penn. 1956) (plaintiff’s failure to plead the locus of the alleged tort requires dismissal); *Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1330 (Fed. Cir. 2009), *quoted in ICU Med., Inc. v. RyMed Techs, Inc.*, 752 F. Supp. 2d 486, 497 (D. Del. 2010) (“Although a party may plead facts upon ‘information and belief’, it must also set forth the ‘specific facts upon which the belief is reasonably based.’” )

Additionally, where a pleader merely makes conclusory allegations of the jurisdiction in which a tort occurred, the Court ignores those conclusory allegations. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). This rule is yet more obvious where, as here, Plaintiffs’ (false) allegation is jurisdictional and is challenged by the defendant. *E.g.*, *Martinez v. Martinez*, 62 Fed. Appx. 309, 313 (10th Cir. 2003) (holding that conclusory allegations of jurisdictional fact are ignored in ruling on a motion to dismiss for lack of jurisdiction, and instead the Court must determine jurisdiction on the facts., citing *Penteco Corp. v. Union Gas Sys.*

Inc., 929 F.2d 1519, 1521 (10th Cir. 1991)). Plaintiffs' attempt to use the well-pled complaint doctrine, when they did not make a well-pled allegation of location, is without merit, separate from the Indian law issues presented. Their complaint must be dismissed because there is no off-Reservation tort.

**II. Even if Plaintiff has made a “well-pled” allegation that the torts occurred off-Reservation, this Court would be required to go behind that allegation, determine on the undisputed facts that the alleged torts are on-Reservation, and then dismiss instead of remanding based upon infringement.**

Even where the jurisdiction in which the tort is alleged to have occurred is pled with specificity, courts are required to determine that jurisdictional fact at the outset. *E.g., Martinez*, 62 Fed. Appx. at 313; *CrunchTime! Info. Sys., Inc. v. Frischs Rest., Inc.*, 768 F. Supp. 3d 183, 186 (D. Mass. 2025). Defendant challenged Plaintiffs' conclusory assertion that the tort occurred off-Reservation and Defendant showed that this Court is required to bar Plaintiffs' state court suit based upon “state law claims” against a Ute tribal member for alleged on-Reservation torts. It is easy for Plaintiffs to claim there is no federal question presented on the face of their Complaint when their Complaint makes a false factual assertion regarding the land status where the incident giving rise to their tort claims occurred. The land status and citizenship of the parties might not be of dispositive consequence in a garden variety tort action involving non-Indians outside of Indian Country. But when an action is brought by non-Indians against an Indian, alleging tortious conduct arising from a Major Crimes Act (“MCA”) case in which Defendant pleaded guilty, necessarily means “[l]and status is a highly relevant concern, and in some cases, may be dispositive.” *Norton v. Ute Indian Tribe of the Uintah & Ouray Rsrv.*, 862 F.3d 1236, 1247 (10th Cir. 2017). Plaintiffs assert jurisdiction in the state court is proper because they represent the incident giving rise to this lawsuit did not occur within the boundaries of the Uintah and Ouray Reservation. ECF #1, Ex. 1.

This Court has already determined that the alleged wrongs occurred on-Reservation. It did

so when it accepted Ms. Cornpeach's guilty plea to two counts of 18 U.S.C. § 113(a)(6); § 1153 under the MCA in *United States v. Cornpeach*, D. Utah Case No. 2:23-cr-00434. Thus, in accepting this plea, this Court has already found the crime occurred in Indian Country, within the exterior boundaries of the Uintah and Ouray Reservation. *Id.* Considering Defendant's guilty plea in her MCA case, in addition to the holdings and "Jenkins maps" in *Ute Indian Tribe v. Utah*, D. Utah Case No. 75-70, this Court can take judicial notice the crime did in fact occur on the Reservation, in Indian Country.

Substituting Plaintiffs' improper factual misrepresentation with the findings this Court has already made regarding the land status where the incident occurred, this case clearly presents a federal question because this Court is faced with a lawsuit where nonmember Plaintiffs are suing a tribal member, in state court, for allegedly state law torts even though those alleged torts occurred in Indian Country/on the Reservation. This is a textbook federal Indian law question involving infringement into tribal sovereignty and the scope of tribal and/or state court jurisdiction, and that question can only be answered by federal law. This question as to whether a state court is infringing upon tribal sovereignty is one that must be answered by a federal court, applying federal law, because "if state-court jurisdiction over Indians or activities on Indian lands would interfere with tribal sovereignty and self-government, the state courts are generally divested of jurisdiction as a matter of *federal law*." *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14 (1987) (emphasis added). "Absent *governing Acts of Congress*, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." *Williams v. Lee*, 358 U.S. 217, 223 (1959).<sup>1</sup> (Emphasis added). As part of its sovereign authority,

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<sup>1</sup> "To allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves." *Id.*

the Ute Indian Tribe, through its court system, has the exclusive right to preside over a tort claim (properly brought under tribal law) allegedly committed by one of its own tribal members on its own tribal lands. Ms. Cornpeach, as a tribal member, has a right to defend herself against these allegations in her Tribe's Court (with those claims properly brought under tribal law) and not the foreign Utah State Court. And the fact Plaintiffs are not Indian is "immaterial." *Williams*, 358 U.S. at 223.

Moreover, since "tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory," they "retain 'those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.'" *Norton*, 862 F.3d at 1243 (quoting *United States v. Mazurie*, 419 U.S. 544, 557 (1975); *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978)). This is true "to the extent that sovereignty has not been withdrawn by *federal* statute or treaty." *Iowa Mut.*, 480 U.S. 9, 14 (1987) (emphasis added). Additionally, the Supreme Court has "repeatedly recognized the Federal Government's longstanding policy of encouraging self-government" and how "[t]ribal courts play a vital role in tribal self-government." *Id.* See *Norton*, 862 F.3d at 1243 ("when a nonmember plaintiff sues a tribal member defendant, the suit in effect seeks to regulate the tribal member" and in turn implicat[es] the "right of the Indians to make their own laws and be governed by them.") (quoting *Nevada v. Hicks*, 533 U.S. 353, 404 (2001)). "*Williams* makes clear that tribal courts have exclusive jurisdiction over suits against tribal members on claims arising on the reservation." *Philip Morris USA, Inc v. King Mountain Tobacco Co.*, 569 F.3d 932, 943 (9th Cir. 2009).

This Court has removal jurisdiction via federal question jurisdiction because if a tribal court suit is beyond the scope of federally imposed limitations on tribal court jurisdiction, federal courts have jurisdiction to enjoin that tribal court action. See e.g. *Brown on Behalf of Brown v. Rice*, 760

F. Supp. 1459, 1465 (D. Kan. 1991); *See also Oglala Sioux Tribe v. C & W Enters., Inc.*, 516 F. Supp. 2d 1039, 1042 (D.S.D. 2007) (“[t]he question whether an Indian tribe retains the power to compel a non-Indian property owner to submit to the civil jurisdiction of a tribal court is one that must be answered by reference to federal law and is a “federal question” under § 1331.”)<sup>2</sup> (quoting *Nat'l Farmers Union Ins. v. Crow Tribe of Indians*, 471 U.S. 845, 852 (1985)). Conversely, if a state court action is beyond the scope of the federal constitutional and statutory provisions through which states agreed to federal control of the powers of Indian tribes, the federal court enjoins state jurisdiction. *See e.g., Ute Indian Tribe v. State of Utah*, 790 F.3d 1000, 1013 (10th. Cir. 2015). This reasoning is applicable here, and this Court should find it has jurisdiction to determine that the state court lacks jurisdiction pursuant to the infringement doctrine, which is part and parcel of federal Indian law.

**III. Plaintiffs claim that removal is improper because Plaintiffs pled their claims under state law is without merit.**

Plaintiffs claim that “removal by Defendant was improper because Plaintiffs claims arise entirely under Utah law.” ECF #25. As noted above, that argument is plainly dependent upon their false allegation that the alleged tort occurred off-Reservation. As Defendant discussed in her opening brief, as and Defendants do not dispute, State tort law simply does not apply to a claim against that a tribal member committed on on-Reservation tort. Here, once the Court repeats its own prior determination that the alleged wrongs occurred on-Reservation, the fact that Plaintiffs pled their claims solely under state law is a *reason* for dismissal.

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<sup>2</sup> Beyond instructive federal law precedent like *Ute v. Utah* that explains the intertwined connection between the scope of state court jurisdiction and federal question jurisdiction, utilizing conditional logic also helps prove the existence of a federal question in this case. If the issue as to whether a *Tribe* retains the power to compel a *non-Indian* to submit to the jurisdiction of a tribal court is a federal question under § 1331, then it logically follows the issue as to whether a *state court* retains the power to compel an *Indian* to submit to its jurisdiction is also a federal question under § 1331.

#### IV. Defendants are not raising possible federal defenses.

The determination as to whether a state court is infringing upon tribal sovereignty is not merely a defense, rather as a threshold issue, it falls in line with the reality that a court has a duty to “assure itself that the threshold requirement of subject matter jurisdiction has been met in every case.” *Med-Tec, Inc. v. Kostich*, 980 F. Supp. 1315, 1320 (N.D. Iowa 1997). “Because jurisdiction is a threshold issue for the court, the district court has ‘broader power to decide its own right to hear the case than it has when the merits of the case are reached.’” *Id.* (quoting *Bellecourt v. United States*, 994 F.2d 427, 430 (8th Cir.1993)). Moreover, Plaintiffs conflate the doctrine of sovereign immunity, and the doctrine concerning infringement into tribal sovereignty—two completely different doctrines. Sovereign immunity gives Tribes “common-law immunity from suit traditionally enjoyed by sovereign powers” and it also applies to “tribal employees acting in their official capacity and within the scope of their authority.” *Santa Clara Pueblo* 436 U.S. at 58; *M.J. ex rel. Beebe v. United States*, 721 F.3d 1079, 1084 (9th Cir. 2013). On the other hand, infringement, as stated above, refers to the “right of reservation Indians to make their own laws and be ruled by them.”<sup>3</sup> *Williams* 358 U.S. at 220.

Defendant presented no argument related to sovereign immunity whatsoever in her original motion. Still, Plaintiff states authorities like *Oklahoma Tax Com’n v. Graham*, 489 U.S. 838, 841 (1989); *Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation*, 770 F.3d 944, 948 (10th Cir. 2014); *Medesimo Tempo, LLC v. Skull Valley Health Care, LLC*, 2022 WL 901590 at \*3 (D. Utah Mar. 28, 2022) are dispositive. Contrary to Plaintiffs’ assertion, these authorities are not

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<sup>3</sup> There are two “independent but related” federal law barriers to the exercise of state jurisdiction over Indians for legal claims arising within Indian country (preemption and infringement). “Either, standing alone, can be a sufficient basis for holding state law inapplicable to activity undertaken on the reservation by tribal members.” *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980).

dispositive because none of those cases dealt with the doctrine of infringement. Thus, they are completely irrelevant in the case at bar because those three cases dealt with arguments regarding sovereign immunity, not infringement, which is the federal issue before this Court.

Plaintiffs' argument that the authorities cited by Defendant are inapplicable since they did not arise in the context of removal is without merit. The fact that no notices of removal were filed in the cases Defendant cited does not automatically mean removal would have been improper in those cases. So, it does not matter that the "Supreme Court in *Williams* never considered the issues... resolved by *Graham*." ECF #25. Additionally, the Court in *Williams* and *Graham* dealt with totally different issues. Namely, as discussed above, *Graham* dealt with sovereign immunity, and *Williams* dealt with infringement into tribal sovereignty. These are two totally different doctrines found in the morass of federal Indian law, and contrary to Plaintiffs' assertions, *Williams* is controlling here—not the authorities Plaintiff cites.

### CONCLUSION

Plaintiffs were required to plead facts showing whether the alleged torts occurred on the Reservation or off the Reservation. They failed to meet that requirement for a well-pled complaint. They now seek to use their own failure to plead the required facts to assert that that this Court must assume, contrary to this Court's own prior order and contrary to any facts that Plaintiffs could have pled in good faith, that the torts occurred off-Reservation. Their argument is contrary to Tenth Circuit case law, and this Court therefore must reject their argument.

To bring tort claims under state law in state court against a tribal member for allegedly tortious conduct that occurred on tribal land is quintessential infringement into the "right of reservation Indians to make their own laws and be ruled by them." *Williams* 358 at 220. Neither Congress nor the Tribe has consented to state court jurisdiction in case such as this. Given the

plenary power of the federal government in Indian affairs, amongst the reasons mentioned above, the state court lacks jurisdiction as a matter of federal law because it is infringing into the exclusive province of the tribal court.

Respectfully submitted,

This 26th day of September 2025.

PATTERSON, REAL BIRD, AND RASMUSSEN  
LLP

/s/ Ethan Tourtellotte  
Ethan Tourtellotte

*Counsel for Defendant*

J. PRESTON STIEFF LAW OFFICES, LLC

/s/ J. Preston Stieff  
J. Preston Stieff

*Counsel for Defendant*

**CERTIFICATE OF COMPLIANCE**

1. I, Ethan Tourtellotte, pursuant to DUCivR 7-1(a)(6), certify that this **REPLY TO PLAINTIFFS' RESPONSE AND MEMORANDUM IN OPPOSITION TO DEFENDANT'S MEMORANDUM REGARDING FEDERAL QUESTION JURISDICTION**) contains 3,038 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).

**CERTIFICATE OF SERVICE**

I certify that on the 26<sup>th</sup> day of September, 2025, I caused a true and correct copy of the foregoing **REPLY TO PLAINTIFFS' RESPONSE AND MEMORANDUM IN OPPOSITION TO DEFENDANT'S MEMORANDUM REGARDING FEDERAL QUESTION JURISDICTION** to be filed electronically with the Clerk of the Court using the CM/ECF System which will send notification of such filing to all parties of record.

*/s/ Ethan Tourtellotte* \_\_\_\_\_  
Ethan Tourtellotte

*/s/ J. Preston Stieff* \_\_\_\_\_  
J. Preston Stieff