2016

Ryan Uresk Harvey, Rocks Off, Inc. And Wild Cat Rentals, Inc., Plaintiffs/Appellants, vs. Ute Indian Tribe of the Uintah and Ouray Reservation, Et Al., Defendants/Appellees.

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

RYAN URESK HARVEY, ROCKS OFF INC., and WILD CAT RENTAL, INC., **Plaintiffs/Appellants** **vs.** **UTE INDIAN TRIBE OF THE UINTAH and OURAY RESERVATION *et al.*,** **Defendants/Appellees.**	**PUBLIC** **Consolidated Appellate Case No. 20160362 CA**

BRIEF OF APPELLEES DINO RAY CESSPOOCH, JACKIE LaROSE, AND SHEILA WOPSOCK IN THEIR INDIVIDUAL CAPACITIES AND D. RAY C. ENTERPRISES L.L.C. AND LaROSE CONSTRUCTION COMPANY, INC.

Appeal from a Judgment of the Eighth Judicial District Court, in and for Duchesne County, State of Utah, Entered by the Honorable Samuel P. Chiara

Clark B. Allred
Allred, Brotherson & Harrington, P.C.
72 North 300 East (123-14)
Roosevelt, UT 84066

John D. Hancock
John D. Hancock Law Group, PLLC
72 North 300 East, Suite A (123-13)
Roosevelt, UT 84066

Attorneys for Plaintiffs/Appellants

Craig H. Howe (#7552)
Deborah Chandler (#12057)
JONES, WALDO, HOLBROOK & MCDONOUGH, P.C.
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101

Daniel S. Press (*pro hac vice*)
VAN NESS FELDMAN, LLP
1050 Thomas Jefferson Street, N.W.
Seventh Floor
Washington, D.C. 20007

Attorneys for Defendants/Appellees as Identified Above

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Roosevelt, UT 84066
Attorneys for Plaintiffs/Appellants

Craig H. Howe (#7552)
Deborah Chandler (#12057)
Jones, Waldo, Holbrook & McDonough, P.C.
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101

Daniel S. Press (pro hac vice)
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, N.W.
Seventh Floor
Washington, D.C. 20007

Attorneys for Defendants/Appellees Dino Ray Cesspooch, Jackie LaRose, and Sheila Wopsock in their individual capacities and D. Ray C. Enterprises L.L.C. and LaRose Construction Company, Inc.

J. Preston Stieff
J. Preston Stieff Law Offices
136 East South Temple, Ste 2400
Salt Lake City, UT 84111

Attorney for Ute Indian Tribe of the Uintah and Ouray Reservation; L.C. Welding & Construction, Inc.; and Huffman Enterprises, Inc.

Christopher R. Hogle
Karina Sargsian
Holland & Hart, LLP
222 S. Main Street, Suite 200
Salt Lake City, UT 84101

Attorneys for Newfield Production Company; Newfield Rocky Mountains, Inc.; Newfield RMI, LLC; and Newfield Drilling Services, Inc.

Patrick S. Boice
HATCH & BOICE
1457 East 3300 South
Salt Lake City, Utah 84106

Attorney for Defendants/Appellees Dino Ray Cesspooch, Jackie LaRose, and Sheila Wopsock in their official capacities

PARTIES TO THE DISTRICT COURT CASE

Plaintiffs/Appellants

RYAN URESK HARVEY

ROCKS OFF INC.

WILD CAT RENTAL, INC.

Defendants/Appellees

UTE INDIAN TRIBE OF THE UINTAH and OURAY RESERVATION

DINO CESSPOOCH, in his official capacity as UTERO Commissioner and in his individual capacity

JACKIE LaROSE, in his official capacity as UTERO Commissioner and in his individual capacity

SHEILA WOPSOCK, in her official capacity as UTERO Director and in her individual capacity

NEWFIELD PRODUCTION COMPANY

NEWFIELD ROCKY MOUNTAINS, INC.

NEWFIELD RMI, LLC

NEWFIELD DRILLING SERVICES, INC.

L.C. WELDING & CONSTRUCTION, INC.

SCAMP EXCAVATION, INC.

HUFFMAN ENTERPRISES, INC.

LaROSE CONSTRUCTION COMPANY, INC.

D. RAY C. ENTERPRISES, L.L.C.

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JURISDICTION OVER APPEAL

This Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78A-4-103(2)(j).

STATEMENT OF ISSUES, STANDARD OF REVIEW, AND PRESERVATION

A. Did the district court abuse its discretion in finding that the Ute Indian Tribe of the Uintah and Ouray Reservation ("Tribe") is a necessary and indispensable party under Utah R. Civ. P. 19? "Ordinarily, a trial court's determination properly entered under Rule 19 will not be disturbed absent an abuse of discretion." *Seftel v. Capital City Bank*, 767 P.2d 941, 944 (Utah Ct. App. 1989), *aff'd sub nom. Landes v. Capital City Bank*, 795 P.2d 1127 (Utah 1990) (citations omitted); *Turville v. J. & J. Props., L.C.*, 2006 UT App 305, ¶ 24, 145 P.3d 1146, 1150.

B. When the Tribe seeks to regulate business activities occurring solely on the Uintah and Ouray Indian Reservation ("Reservation"), is there a need for the court to balance the equities of the State and the Tribe? Because this is a question of law, a "correctness standard" applies. *St. Benedict's Dev. Co. v. St. Benedict's Hosp.*, 811 P.2d 194, 196 (Utah 1991).

C. Was the district court correct to grant a Utah R. Civ. P. 12(b)(6) motion to dismiss Plaintiffs-Appellants' claims against the Defendants-Appellees Dino Ray Cesspooch, Jackie LaRose, and Sheila Wopsock in their individual capacities (the "Individual Defendants") and LaRose Construction Company, Inc. and D. Ray C. Enterprises, L.L.C., (the "Company Defendants"), including claims for (1) "extortion,"

(2) "blacklisting" in violation of article XII, section 19 and article XVI, section 4 of the Utah Constitution, (3) unlawful restraint of trade in violation of the Utah Antitrust Act and article XII, section 20 of the Utah Constitution, (4) civil conspiracy, and (5) tortious interference with economic relations? Because "the propriety of a 12(b)(6) dismissal is a question of law," the district court's ruling is reviewed under a "correctness standard." *St. Benedict's Dev. Co. v. St. Benedict's Hosp.*, 811 P.2d at 196.

D. Assuming Plaintiffs-Appellants have adequately briefed the issue, which they did not, did the district court abuse its discretion by denying Plaintiffs-Appellants' Utah R. Civ. P. 15(d) motion for supplemental pleadings? "A motion to amend under Rule 15(d) is addressed to the sound discretion of the [trial] court. . . ." *Sw. Nurseries, LLC v. Florists Mut. Ins., Inc.*, 266 F. Supp. 2d 1253, 1256 (D. Colo. 2003) (citation omitted).

STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Disposition by District Court

Plaintiffs-Appellants filed this action on April 5, 2013 in the Eighth Judicial District Court, Duchesne County, State of Utah, Civil No. 13000009. (R. 1-21.) The original Complaint sought declaratory relief with respect to the Tribe's exercise of authority and asserted claims for tortious interference with economic relations and extortion against the Individual Defendants. (*Id.*) On May 1, 2013, defendants filed a motion to dismiss the Complaint. On July 17, 2013, Plaintiffs-Appellants filed a motion for leave to file an amended complaint. (R. 431-35.)

On July 22, 2013, the court held a hearing on the motion to dismiss. The court asked for additional briefing on the issue of whether the Tribe made a general appearance in the case. (R. 477.)

On September 4, 2013, Plaintiffs-Appellants filed the Amended Complaint for Declaratory Relief, Injunctive Relief and Damages ("Amended Complaint"). (R. 548-79.) On September 20, 2013, the Tribe filed a notice of removal to the United States District Court, District of Utah. (R. 629-31.) The case was later remanded, and a motion to stay proceedings was filed by certain defendants on August 24, 2014. (R. 648-55, 738-48.) An order staying the case was entered on October 9, 2014. (R. 895-900.) The stay was lifted on October 20, 2015. (R. 1141.)

On October 7, 2015, the Individual Defendants and the Company Defendants filed their motion to dismiss the Amended Complaint. (R. 198-200.) A hearing was scheduled on the motion, as well as the motions to dismiss filed by all other parties, for January 29, 2016. The parties presented oral argument on that date. (R. 1947.) After oral argument, Plaintiffs-Appellants filed a motion for leave to file a supplemental pleading. (R. 1469-73.)

On March 28, 2016, the district court entered four written rulings dismissing all of the claims in the case and denying the motion for leave to file a supplemental pleading. (R. 1757-93.) On May 12, 2016, the district court entered its judgment dismissing all of the claims in the action. (R. 2041-75.)

B. Statement of Facts

The key fact alleged in the Amended Complaint is that on March 20, 2013, the Ute Tribal Employment Rights Office ("UTERO") issued a letter (the "March 20 Letter"), addressed to all oil and gas companies, signed by Sheila Wopsock in her capacity as UTERO Director. (R. 53; a copy of the letter is attached to the Addendum as Exhibit "A.") The March 20 Letter states that the Tribal Energy and Minerals Department had "revoked the access permits" for "Rocks Off, Inc.-Ryan Harvey," among other entities. The March 20 Letter further states that, based on the Tribal Energy and Minerals Department's actions, the UTERO Commission had revoked the UTERO license for the listed businesses, including Rocks Off, Inc., pursuant to a Tribal law called the UTERO Ordinance, Ord. No. 10-002 (July 27, 2010). The March 20 Letter states that, as

> a result of such action, these businesses and individuals are no longer authorized to perform work on the Uintah and Ouray Reservation. Any use of these businesses and individuals by an employer doing work on the Reservation after receipt of this Notice may result in the assessment of penalties and/or sanctions against such employer to the fullest extent of the law. [1]

(*Id.*)

In their appeal brief of September 28, 2016 ("Appeal Brief"), Plaintiffs-Appellants do not accurately describe the contents of the March 20 Letter. For instance, Plaintiffs-

[1] While claiming to provide this Court with the relevant portion of the March 20 Letter, Plaintiffs-Appellants omitted the first sentence of the above quote, which provides key context regarding the scope of the UTERO directive. (Brief of Pl.-App. at 31-32.)

Appellants make the broad assertion that, on "March 20, 2015 [sic], Wopsock demanded that all oil and gas companies cease doing business with Plaintiffs." (Brief of Pl.-App. at 12.) They further argue that the demands "were not limited to Ute tribal lands." (*Id.*) Plaintiffs-Appellants' characterizations go well beyond the actual contents of the March 20 Letter, which makes no reference to Plaintiffs-Appellants' activities off of Tribal lands. Also, citing page 562 of the record (which is page 15 of the Amended Complaint), Plaintiffs-Appellants state that all "acts and occurrences complained of in the Amended Complaint occurred on fee land outside of Ute tribal land." (*Id.* at 14.) This language, however, does not appear at the cited portion of the Amended Complaint. Instead, the Amended Complaint alleges that the "unlawful and unauthorized conduct has caused and continues to cause substantial and irreparable harm to non-Indian Plaintiffs' business activities on private fee land that is not Indian Country or reservation." (*Id.* at 44.)

SUMMARY OF ARGUMENTS

1. The district court correctly held that the Tribe is a necessary and indispensable party in this proceeding. The majority of the Prayers for Relief in the Amended Complaint ask the court to take action against the Tribe, and according to the facts in the Amended Complaint, all of the actions by the Individual Defendants that allegedly harmed Plaintiffs-Appellants occurred on Ute Tribal lands.

2. The questions of whether the Individual Defendants acted *ultra vires* and beyond the scope of the Tribe's jurisdiction are questions of law, not questions of fact,

and as such, the court does not assume these legal conclusions to be true for purposes of a Motion to Dismiss. Further, questions of whether the Individual Defendants acted *ultra vires* (i.e., in violation of the UTERO Ordinance) and beyond the scope of the Tribe's jurisdiction require an interpretation of Tribal law; therefore these questions are outside the jurisdiction of the Utah state courts and would properly be heard by the Ute Tribal Court.

3. A balancing of the interests of the State and the Tribe is not necessary in this case because the Tribe is not attempting to regulate off-Reservation business activities. Indeed, the Amended Complaint fails to allege a single business activity that the Tribe or the Individual Defendants sought to regulate on non-Tribal land. The only action the Individual Defendants took was to exercise authority over companies engaged in business activities on Tribal lands, which is squarely within the Tribe's jurisdiction and does not require a balancing of equities.

4. The district court correctly dismissed the claims against the Individual Defendants because the Tribe's sovereign immunity bars the suit. Plaintiffs-Appellants have not identified a single provision of the UTERO Ordinance that they believe the Individual Defendants exceeded or violated, and in any event, only the Ute Tribal Court can interpret the UTERO Ordinance and make an *ultra vires* determination. The Tribe is the real party in interest with respect to questions of the scope of authority that the Tribe is capable of bestowing on Tribal officials; yet the Tribe is a necessary and indispensable

party that cannot be joined in this action, and the Ute Tribal Court has initial jurisdiction over this question.

5. The district court properly dismissed the Plaintiffs-Appellants' tort claims because they are not supported by the facts in the record, and some of the alleged tort claims do not even exist under Utah law.

6. The district court properly dismissed the claims against the Company Defendants because the Amended Complaint fails to set out any facts supporting the claims made against the Company Defendants.

7. The district court properly denied Plaintiffs-Appellants' motion for leave to file a supplemental pleading.

ARGUMENT

By and through counsel, the Individual Defendants and the Company Defendants respectfully urge this Court to uphold the decision of the district court in this proceeding, including the district court's holdings: (1) that the Tribe is a necessary and indispensable party that has not been joined, (2) that the Individual Defendants are immune from suit based on the Tribe's sovereign immunity, (3) that the Amended Complaint fails to allege the necessary facts supporting the claims made against the Company Defendants, and (4) dismissing all of Plaintiffs-Appellants' tort claims. As set out below, the district court correctly found that, because all of the actions by the Individual Defendants that allegedly harmed Plaintiffs-Appellants took place on Ute Tribal lands and were actions by an

agency of the Ute Tribal government (i.e., the UTERO), this case belongs in Ute Tribal Court.

In addition, certain of the arguments in Plaintiffs-Appellants' Appeal Brief rely on the assertion of facts which do not appear in their Amended Complaint, such that they may not be relied upon in this Appeal.

I. THE DISTRICT COURT CORRECTLY HELD THAT THE TRIBE IS A NECESSARY AND INDISPENSABLE PARTY THAT HAS NOT BEEN JOINED.

In their Appeal Brief, Plaintiffs-Appellants argue that the Tribe is not a necessary and indispensable party in this proceeding. (Brief of Pl.-App. at 19-28.) They claim that the real focus of Plaintiffs-Appellants' case is the alleged actions of the individual Tribal officials named as Defendants, and that the Tribe would really not be affected by a decision against those Tribal officials because their alleged actions were *ultra vires* (i.e., beyond the scope of the UTERO Ordinance) and beyond the scope of authority that the Tribe is capable of bestowing on them. (*Id.* at 23, 27-28.)

Plaintiffs-Appellants' position on appeal is defeated by the contents of the Amended Complaint and by relevant case law. First, their assertion that the Tribe, contrary to the holding below, does not have a critical interest in this proceeding, is undercut by the fact that 11 of the 18 Prayers for Relief in the Amended Complaint ask the court to take action against the Tribe. Second, according to the facts in the Amended Complaint, all of the actions by the Individual Defendants that allegedly harmed Plaintiffs-Appellants occurred on the Reservation; Plaintiffs-Appellants assert for the first

time in the Appeal Brief that the Individual Defendants took actions off of the Reservation that harmed Plaintiffs-Appellants. Third, Plaintiffs-Appellants conflate facts with legal conclusions; the questions of whether the Individual Defendants acted *ultra vires* and beyond the scope of the Tribe's jurisdiction are questions of law, not questions of fact. As such, contrary to Plaintiffs-Appellants' assertion, the court does not assume these legal conclusions to be true for purposes of a Motion to Dismiss. Because these questions have not been ruled on by a court, Plaintiffs-Appellants cannot properly make the arguments in their Appeal Brief which assume as a "given" that the Individual Defendants acted *ultra vires* or exceeded the jurisdiction of the Tribe. Finally, Plaintiffs-Appellants fail to rebut the district court's holding, based on unbroken U.S. Supreme Court precedent, that only the Ute Tribal Court may hear matters that require interpretation of Ute Tribal law, such as the determination of whether the Individual Defendants acted *ultra vires* in violation of the UTERO Ordinance.

A. Background Regarding the Tribe, UTERO, and UTERO Ordinance

The Ute Business Council, the legislative body of the Tribe, enacted the UTERO Ordinance, which established the UTERO. The UTERO Ordinance sets out the terms and conditions upon which an employer may work on the Reservation, including conditions regarding its selection of employees, subcontractors, and suppliers. (R. 1076.) The Tribe enacted the UTERO Ordinance in order to promote utilization of Indian workers, subcontractors, and suppliers, and to ensure that anyone doing business on the Reservation complies with the Tribe's laws. One mechanism for enforcing these

requirements is to require all companies doing business on the Reservation – whether as contractors, subcontractors, or suppliers – to obtain a business license from the UTERO. (*Id.*) The UTERO Ordinance requires that all decisions by the UTERO regarding an entity's compliance with the Ordinance must be made or approved by the three-member UTERO Commission, a quasi-judicial body created by the Ordinance, with a right of appeal to the Ute Tribal Courts. (R. 1111-15.) No person or company is required to do business on Tribal lands, but if they choose to do so, they are required to comply with Tribal law, including the UTERO's regulations.

As discussed *supra*, on March 13, 2013, the Tribal Energy and Minerals Department revoked the access permit of Rocks Off, Inc.-Ryan Harvey, and as a result, the UTERO Commission revoked Rocks Off, Inc.'s UTERO business licensee. Although Plaintiffs-Appellants' facilities are located off of the Reservation, they were supplying gravel and equipment for work that was being done on the Reservation by companies such as Newfield Production Company, Newfield Rocky Mountain, Inc., Newfield RMI, LLC, and Newfield Drilling Services, Inc. (collectively, "Newfield Defendants"). As such, the UTERO sent the March 20 Letter to the Newfield Defendants and other oil and gas companies doing business on the Reservation to inform them of the revocation.

The March 20 Letter states that it was issued by the UTERO pursuant to the UTERO Ordinance. The UTERO Ordinance derives from the Tribe's authority to set terms and conditions for businesses working on the Reservation, including terms and conditions related to the selection of subcontractors and suppliers.

The March 20 Letter makes no mention of any activities or business dealings of Plaintiffs-Appellants occurring off of the Reservation. Thus, what occurred in the present case is that the Tribe, by adopting the UTERO Ordinance, has exercised its sovereign authority to determine who may do business within its jurisdiction and on what terms. While Newfield is not required to work on the Reservation, if it chooses to do so, it must comply with the Tribe's laws, including the requirement that it use only suppliers and subcontractors licensed by the UTERO.

Plaintiffs-Appellants are unhappy with the actions by the UTERO Commission that are set out in the March 20 Letter, but rather than challenging those actions by using the procedures provided for in the UTERO Ordinance – i.e., an appeal to the Ute Tribal Court – Plaintiffs-Appellants are seeking to circumvent those procedures by claiming that the governmental actions by the Tribal officials involved, in their official and individual capacities, constitute torts in the State of Utah. There is simply no precedent for using tort actions in one jurisdiction to collaterally challenge official actions by governmental officials in another jurisdiction.

Further, while Plaintiffs-Appellants assert that the March 20 Letter was the cause of the harm they suffered and that the situs of the harm they suffered was off-Reservation and in the State of Utah, the Amended Complaint does not contain a single allegation that the Tribe, the UTERO, or the Individual Defendants sought to or did exercise any authority off of the Reservation, sought to interfere with Plaintiffs-Appellants' off-Reservation business activities, or imposed a boycott on Plaintiffs-Appellants' off-

Reservation activities. The Amended Complaint fails to provide any allegation that the Individual Defendants told companies subject to the UTERO's jurisdiction to stop doing business with Plaintiffs-Appellants off of the Reservation. Nor does it contain any examples of off-Reservation business opportunities that Plaintiffs-Appellants lost because of the March 20 Letter or actions by the Individual Defendants. As indicated *supra*, the March 20 Letter makes no reference to off-Reservation activities.

B. Plaintiffs-Appellants' Argument that the Tribe Is Not a Necessary and Indispensable Party Is Flawed for Multiple Reasons.

The district court held that what is at stake in this case is the exercise of tribal authority by the Ute Tribe over business activities within the Reservation, such that the Tribe was a necessary and indispensable party. (R. 1772, 1776.) In their Appeal Brief, making arguments that have no basis in the case law or the facts set out in the Amended Complaint, Plaintiffs-Appellants assert that the Tribe did not have a significant interest in the actions by the Individual Defendants because the Individual Defendants were allegedly acting *ultra vires* (i.e., in violation of the UTERO Ordinance) and beyond the scope of the jurisdiction that the Tribe is capable of bestowing on them.

This argument fails for three reasons. First, it relies on Plaintiffs-Appellants' mistaken impression that the court must accept as true for purposes of the Motion to Dismiss and this Appeal the so-called "facts" that the Individual Defendants acted *ultra vires* and beyond the scope of the Tribe's jurisdiction, whereas in actuality these are not facts but rather are legal questions that no court has yet ruled upon, and are not to be deemed to be true for purposes of a Motion to Dismiss. Second, as the district court

found, only the Ute Tribal Court has jurisdiction to interpret Ute Tribal law for purposes determining whether certain actions were *ultra vires* and for making an initial determination as to the scope of the Tribe's jurisdiction. Third, even if this Court could rule on those issues, the facts that Plaintiffs-Appellants allege in their Appeal Brief, which they claim show that the Individual Defendants acted *ultra vires* and beyond the scope of the Tribe's authority (particularly that the Individual Defendants interfered with Plaintiffs-Appellants' business opportunities outside of Tribal lands), do not appear anywhere in the Amended Complaint, such that these alleged facts set forth in the Appeal Brief are not properly before this Court.

The following sections of this brief apply these three points separately to the claim that the Individual Defendants exceeded the scope of the Tribe's authority and to the claim that they acted *ultra vires*. While there are many similarities between these two issues, there are also important differences that justify discussing them separately.

- **The Scope of the Authority that the Tribe Is Capable of Bestowing on Its Officials**

  i. **Whether the Individual Defendants Exceeded the Authority that the Tribe Is Capable of Bestowing on Them Is a Legal Question that No Court Has Ruled On, Not a Fact**

Plaintiffs-Appellants take it as a fact that the Individual Defendants exceeded the scope of the authority that the Tribe is capable of bestowing on them: "[f]or purposes of the motion before the trial court, the facts that the officials acted outside the scope of the jurisdiction of the Ute Tribe must be assumed true." (Brief of Pl.-App. at 21.) This

position is presumably based on a misreading of the principle that in a motion to dismiss, all of the facts in the complaint are assumed to be true. However, a determination that someone has exceeded the jurisdiction of a government is not a fact, it is a legal conclusion. No court has found that the Individual Defendants exceeded the authority that the Tribe is capable of bestowing on them, so Plaintiffs-Appellants may not, as they have, premise their argument on this issue. If in the future a court does evaluate the scope of the authority that the Tribe is capable of bestowing on the UTERO officials, the Tribe clearly will be a necessary and indispensable party in that proceeding, because decisions about the scope of the Tribe's jurisdiction go to the very heart of its sovereignty.

ii. The Tribal Court Has the First Right to Rule on the Scope of the Tribe's Jurisdiction.

Under well-established U.S. Supreme Court precedent, the forum that has the initial authority to rule on the scope of the Tribe's jurisdiction is the Ute Tribal Court. (R. 1079-80.) *See Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1987) ("[T]he federal policy supporting tribal self-government directs a federal court to stay its hand in order to give the tribal court a 'full opportunity to determine its own jurisdiction.'") (quoting *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 857 (1985)). *See also Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997) ("As to nonmembers, we hold, a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction."). Thus, even if Plaintiffs-Appellants had properly framed the issue as a legal question and asked the

district court to rule on it, the district court would have lacked authority to do so until the Tribal Court had issued a determination.

iii. Plaintiffs-Appellants Rely on Alleged Facts Not Contained in Their Amended Complaint.

Assuming *arguendo* that the district court had the authority to consider this issue, the alleged facts that Plaintiffs-Appellants set out in their Appeal Brief in support of their assertion that the Individual Defendants exceeded the scope of the Tribe's authority do not appear in their Amended Complaint, such that they are not properly before the court.

At the heart of Plaintiffs-Appellants' argument that the Individual Defendants exceeded the scope of the Tribe's authority (as well as their argument that the state courts have an interest in this case) are the repeated representations in their Appeal Brief that the Individual Defendants demanded that Newfield and other companies subject to the Tribe's jurisdiction cease doing business with Plaintiffs-Appellants outside of Tribal lands. *See, e.g.*, Brief of Pl.-App. at 20 ("the directives are *not* limited to a prohibition against use of Plaintiffs' Products on tribal ground") (emphasis in original); *id.* at 35 ("The tribal officials [sic] demand was not limited to Ute Tribal land but a general boycott of Plaintiffs' businesses.")

The problem with this assertion is that the Amended Complaint does not contain a single allegation that the Tribe, the UTERO, or its officials sought to or did interfere with Plaintiffs-Appellants' off-Reservation business dealings or imposed a boycott on Plaintiffs-Appellants' off-Reservation activities. Nor does it contain any examples of off-

Reservation business opportunities that Plaintiffs-Appellants lost because of the March 20 Letter (which is not surprising, given that the Letter does not refer to off-Reservation activities) or other actions by the Individual Defendants. The Amended Complaint merely alleges that Plaintiffs-Appellants' businesses, which are located off the Reservation, were hurt by the March 20 Letter; however, the location of their business offices is not an "activity," nor does it describe an action taken by the UTERO officials that caused a lost business opportunity off of the Reservation.

Rather, the allegations in the Amended Complaint regarding the harm to Plaintiffs-Appellants' business dealings are limited to actions that the Individual Defendants allegedly took on Tribal land. As the district court found (in the context of evaluating Plaintiffs-Appellants' tort claims):

> The facts set forth in the Plaintiffs' Amended Verified Complaint establish, at most, that Newfield was notified by UTERO that Rocks Off's access permit had been revoked and were no longer authorized to conduct work on tribal land, and that Newfield followed that directive by no longer utilizing Rocks Off for work on tribal land.

(R. 1778.)

Thus, Plaintiffs-Appellants' argument that the Tribe is not a necessary and indispensable party because the Individual Defendants acted outside the scope of the Tribe's authority fails because it relies on factual allegations that do not appear in the Amended Complaint. Put another way – in a motion to dismiss, the alleged facts in a complaint are presumed to be true, but the party opposing that motion is bound by those facts and may not create new ones later for use in its legal arguments. All of Plaintiffs-Appellants' arguments

based on an alleged factual foundation that the UTERO officials acted outside Tribal lands or beyond the scope of their authority must be rejected.

2. *Ultra Vires*

i. Whether the Individual Defendants Acted *Ultra Vires* of the UTERO Ordinance Is a Legal Question that No Court Has Ruled On, Not a Fact

Plaintiffs-Appellants' *ultra vires* argument rests on the assumption that it has already been determined that the Individual Defendants acted *ultra vires* of the UTERO Ordinance. While they do not say so expressly, it appears that Plaintiffs-Appellants are again are relying on the incorrect assumption that their claim that the Individual Defendants acted *ultra vires* must be accepted as true for purposes of the Motion to Dismiss. However, like the determination of whether the Individual Defendants exceeded the scope of the Tribe's jurisdiction, the question of whether the Individual Defendants acted *ultra vires* of the UTERO Ordinance is a legal question that no court has ruled on. Since the Plaintiffs-Appellants' *ultra vires* argument is based on this faulty presumption, it must fail.

ii. Only the Ute Tribal Court May Determine if the Individual Defendants Acted *Ultra Vires* of the UTERO Ordinance.

As the district court found, "[w]hether the UTERO officials exceeded the scope of authority given to them by the UTERO Ordinance necessarily requires examining and interpreting the UTERO Ordinance. Interpreting tribal laws is outside the scope of a state district court's general jurisdiction." (R. 1787-88.) The district court cited U.S. Supreme

Court precedent that "'[a]djudication of such matters by any nontribal court also infringes upon tribal law-making authority, because the tribal courts are best qualified to interpret and apply tribal law." (R. 1788 (citing *Iowa Mutual*, 107 S. Ct. at 977)).

iii. The Amended Complaint Does Not Contain Any Alleged Facts that Support Plaintiffs-Appellants' *Ultra Vires* Argument.

The assertion that the Individual Defendants acted *ultra vires* means that they allegedly acted beyond the authority granted to them by the UTERO Ordinance. Yet the Amended Complaint does not specify what actions allegedly taken by the Individual Defendants violated the UTERO Ordinance, nor identifies a single provision of the UTERO Ordinance that the Individual Defendants exceeded. Thus, once again, Plaintiffs-Appellants assert legal arguments that have no factual basis in their Amended Complaint and therefore may not stand.

3. The Tribe Is a Necessary and Indispensable Party.

In sum, Plaintiffs-Appellants' effort to show that the Tribe is not a necessary or indispensable party is: (1) premised on the existence of legal conclusions that have never been made by any court, (2) based on factors – the scope of the Tribe's authority and the *ultra vires* determination – that are within the jurisdiction of the Ute Tribal Court, not the Utah state court, and (3) not supported by the facts alleged in the Amended Complaint.

For these reasons, not only do the Plaintiffs-Appellants' new arguments on this point fail, but they in fact reinforce the district court's finding that the Tribe is a necessary and indispensable party, because the Tribe would be severely prejudiced if

decisions about the scope of its jurisdiction and the application of its ordinances were decided without it being a party to the case.

4. Plaintiffs-Appellants Consented to the Jurisdiction of the Ute Tribal Court for the Matters Raised in the Amended Complaint.

Plaintiffs-Appellants claim that the district court erred when it found that Plaintiffs-Appellants have a remedy in Tribal Court or the tribal administrative process: "In essence the trial court determined it was appropriate that Plaintiffs subject themselves to tribal regulatory control to address business activities the situs of which is exclusively interstate." (Brief of Pl.-App. at 26.) As discussed *supra*, however, the Amended Complaint does not contain a single allegation that the Tribe, the UTERO, or the Individual Defendants exercised any authority off of the Reservation or sought to interfere with Plaintiffs-Appellants' off-Reservation business activities. As the district court found, the facts alleged in the Amended Complaint establish at most that the UTERO and the Individual Defendants exercised their authority to restrict the Plaintiffs-Appellants' on-Reservation business activities for failure to comply with the UTERO Ordinance. (R. 1778.)

In the proceedings below, the Individual Defendants noted that Plaintiffs-Appellants consented to the jurisdiction of the Ute Tribal Court for resolving UTERO-related matters when they executed the documents necessary to obtain Ute Tribal business licenses, Ute Tribal access permits, and Ute certification. (R. 1077.) While Plaintiffs-Appellants claim that they signed these documents under "duress" (Brief of Pl.-

App. at 11), what they are calling "duress" was simply the insistence by the UTERO officials that Plaintiffs-Appellants comply with the UTERO Ordinance if they wished to continue providing goods and services to companies performing work on Tribal lands.

II. A BALANCING OF THE INTERESTS OF THE STATE AND THE TRIBE IS NOT NECESSARY BECAUSE THE TRIBE IS NOT ATTEMPTING TO REGULATE OFF-RESERVATION BUSINESS ACTIVITIES.

Plaintiffs-Appellants argue that the district court should have balanced the equities in this case, claiming that the State's interests outweigh the Tribe's interests in regulating business activity occurring off of the Reservation in the State of Utah. (Brief of Pl.-App. 28-30.) This argument fails because, as discussed *supra*, the Amended Complaint fails to allege a single business activity that the Tribe or the Individual Defendants sought to regulate on non-Tribal land. Plaintiffs-Appellants' reference to *Montana v. United States*, 450 U.S. 544 (1981), and its progeny is inapposite, because in that line of cases, the U.S. Supreme Court limited the authority of tribes over non-Indians on non-Indian land. In the present case, however, the only action the Individual Defendants took was to exercise authority over companies engaged in business activities on Tribal lands. There is not a single case that challenges or begins to limit the authority of a tribe to set the terms and conditions upon which a party may use its lands, and there are no court cases that call for balancing of equities in such a situation. Therefore, the district court did not need to engage in a balancing of equities in this case.

III. THE DISTRICT COURT CORRECTLY DISMISSED THE CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS BECAUSE THE TRIBE'S SOVEREIGN IMMUNITY BARS THE SUIT.

The district court properly dismissed all claims against the Individual Defendants on the basis that sovereign immunity bars the suit. (R. 1787.) On appeal, Plaintiffs-Appellants assert that the Tribe's sovereign immunity does not extend to the Individual Defendants, because the Individual Defendants were allegedly acting *ultra vires* and beyond the scope of the authority that the Tribe is capable of bestowing on them. These arguments are unavailing.[2]

A. The Determination of Whether the Individual Defendants Acted *Ultra Vires* Is Outside the Jurisdiction of the Utah State Courts.

The Appeal Brief repeatedly argues that the Individual Defendants acted *ultra vires* and therefore are not covered by tribal sovereign immunity. (Brief of Pl.-App. at 16, 18, 19-28, 45.) This is a bald accusation; as noted *supra*, Plaintiffs-Appellants have not identified a single provision of the UTERO Ordinance that they believe the Individual Defendants exceeded or violated. Absent such alleged facts in their Amended Complaint, this argument must fail. Further, Plaintiffs-Appellants mistakenly argue that the *ultra vires* nature of the Individual Defendants' actions is a fact that must be assumed to be true for purposes of a motion to dismiss. As discussed *supra*, this is a question of law that no court has ruled on, and because it requires an interpretation of tribal law (i.e., the UTERO Ordinance), this question is outside the jurisdiction of the Utah state courts. (R.

[2] Plaintiffs-Appellants consistently refer to the Individual Defendants using their official titles, such as Commissioner or Director, supporting the argument that they are acting as agents of the Tribe and thus entitled to protection under the Tribe's immunity.

1787-88.) *See also Bowen v. Doyle*, 880 F. Supp. 99, 129 (W.D.N.Y. 1995), *superseded by statute on other grounds by Peters v. Noonan*, 871 F. Supp. 2d 218 (W.D.N.Y. 2012) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984)) ("there is no state or federal interest served by providing a forum other than the tribal court for the resolution of internal tribal disputes, and as a matter of federal law, the *Pennhurst* rule bars the state and federal courts from applying the [*Ex Parte*] *Young* doctrine to a tribal law claim.").

. **The Amended Complaint Does Not State with Specificity What the Individual Defendants Allegedly Did that Is Beyond the Scope of the Authority the Tribe Is Capable of Conferring on Them; the Tribe Is the Real Party in Interest with Respect to Questions of Its Ability to Bestow Authority on Tribal Officials.**

Plaintiffs-Appellants allege that the Tribe's sovereign immunity does not extend to the Individual Defendants because the Individual Defendants exceeded the scope of the authority that the Tribe is capable of bestowing on them. (Brief of Pl.-App. at 18, 21-22, 45-47.) This argument fails for two reasons. First, it is insufficiently pled, and second, the Tribe is the real party in interest with respect to questions of what authority the Tribe is capable of bestowing on its officials, but as explained *supra*, the Tribe is a necessary and indispensable party that cannot be joined in this action.

Plaintiffs-Appellants failed to follow the standard established by the cases cited in their Appeal Brief, which hold that in order to sustain a claim for damages against a tribal official in his or her individual capacity, a plaintiff cannot merely allege that the tribal

official violated state or federal law, but rather must plead specific facts to prove that the official acted without any colorable claim of authority.

> Although the plaintiff alleges that some of the defendants' activities were "illegal" or "unlawful" (see, e.g., Complaint, Count Three, ¶¶ 45-46.), such allegations are not, by themselves, sufficient to establish that the defendants acted outside the scope of their authority. In *Basset v. Mashantucket Pequot Museum and Research Center Inc., supra,* 221 F. Supp. 2d at 281, the United States District Court for the District of Connecticut held that "it is insufficient for the [plaintiff] merely to allege that [the defendants] violated state and federal law in order to state a claim that [the defendants] acted beyond the scope of their authority; it would be tantamount to eliminating tribal immunity from damages actions because a plaintiff must always allege a wrong in order to state a claim for relief. Rather, the Court finds that to state a claim for damages against [the defendants], the plaintiffs would have to allege and prove that [the defendants] acted 'without any colorable claim of authority,' apart from whether they acted in violation of federal or state law."

Trump Hotels & Casino Resorts Dev. Co., LLC v. Rosow, No. X03CV034000160S, 2005 WL 1273260, at *12 (Conn. Super. Ct. May 2, 2005) (emphasis added). The Amended Complaint simply asserts that the Individual Defendants violated state law; it does not state with specificity what the Individual Defendants allegedly did that is beyond the scope of the authority the Tribe is capable of conferring on them, nor argue that the Individual Defendants acted without any colorable claim of authority. As noted above, the district court found that the "minimal factual allegations" in the Amended Complaint "fail to support the various claims the Plaintiffs set forth." (R. 1778.)

In the Appeal Brief, Plaintiffs-Appellants somewhat refine their position, and as discussed *supra*, appear to argue that the Individual Defendants' actions exceeded the scope of the authority that the Tribe is capable of bestowing because those actions

allegedly occurred off of tribal land. However, as explained *supra*, the only actions by the Individual Defendants that allegedly harmed Plaintiffs-Appellants were taken on Tribal land – namely, revocation of Rocks Off, Inc.'s business license and issuance of the March 20 Letter.[3] The Individual Defendants had, at a bare minimum, a colorable claim of authority to perform these actions, as required by the *Basset / Trump* test; the district court expressly recognized the Tribe's interest in regulating business activity on tribal lands. (R. 1770.)

To the extent that Plaintiffs-Appellants are asking this Court to determine the scope of the authority that the Tribe is capable of bestowing on its officers, then, as recognized by the district court and discussed further *supra*, the Tribe is the real party in interest in such a determination, and the Ute Tribal Court has initial jurisdiction over this question.[4] U.S. Court of Appeals for the Tenth Circuit precedent establishes that when a

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[3] At the very end of the Facts Pleaded in Amended Complaint section of the Appeal Brief, Plaintiffs-Appellants claim that "[a]ll acts and occurrences complained of in the Amended Complaint occurred on fee land outside of Ute Tribal land as defined under *Hagen v. Utah*, 510 U.S. 399 (1994). R. 562." (Brief of Pl.-App. at 14.) This statement is not an accurate representation of what is contained in the Amended Complaint. A comparison of the "Facts" in the Appeal Brief and the comparable allegations in the Amended Complaint shows that in the latter, the allegations rarely if ever allege that the actions occurred off of Ute Tribal lands, and never with the specificity required by the principles set out in *Trump*.

[4] The district court stated that "[t]he Plaintiffs request the Court issue a declaratory order limiting the Tribe, UTERO, and UTERO officials from regulating private business activities of non-Indians outside of the tribal land. This type of relief directly involves the Tribe, not the individual Defendants personally." (R. 1787.) The district court further held that "a determination about whether the Tribe and its officials may issue

tribe is the real party in interest, the tribe's sovereign immunity extends to tribal officials. *See Frazier v. Simmons*, 254 F.3d 1247, 1253 (10th Cir. 2001) (tribe's sovereign immunity extends to tribal official when tribe "is the real, substantial party in interest"); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984) ("[T]he general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter") (citation omitted); *see also Maxwell v. Cty. of San Diego*, 708 F.3d. 1075, 1089 (9th Cir. 2013) (sovereign immunity did not bar suit against the tribal employees because the tribe was not the real party in interest when tribal employees allegedly performed grossly negligent acts off-Reservation pursuant to a contract with a non-tribal entity). As such, the Tribe's sovereign immunity applies to the Individual Defendants with respect to questions about the scope of authority that the Tribe may confer on its officials.

IV. THE DISTRICT COURT PROPERLY DISMISSED THE TORT CLAIMS BECAUSE THEY ARE NOT SUPPORTED BY THE FACTS IN THE AMENDED COMPLAINT.

In the Ruling and Order dated March 28, 2016, addressing the motion to dismiss filed by the Newfield Defendants, the district court stated that, in a separate ruling, it had found that the "Ute Tribe was a necessary and indispensable party to this action. However, the Ute Tribe is immune from suit." (R. 1776.) The district court adopted that decision in the Ruling and Order and stated that, while "that decision makes the additional arguments moot, the Court will address the additional arguments as an

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directives relating to oil companies' business activities, such as the directive alleged to have been issued in this case, is a critical interest of the Tribe." (R. 1768.)

alternative basis to dismiss the Amended Verified Complaint." (*Id.*) The district court then went on to conclude that the minimal factual allegations in the Amended Complaint "failed to support the various claims the Plaintiffs set forth. The facts do not support a finding that Newfield and the other Defendants came to a meeting of the mind to harm the Plaintiffs' business." (R. 1778-79.) Although in this Ruling the district court was addressing the motion to dismiss filed by the Newfield Defendants, as an alternative basis to affirm the court's judgment in favor of the Individual Defendants and the Company Defendants, this Court may properly rely on the independent bases for dismissal for failure to state a claim under Rule 12(b)(6) cited by the district court. *See State v. Montoya*, 937 P.2d 145, 149 (Utah Ct. App. 1997) (stating that an appellate court may affirm on grounds not urged below if the ground or theory "is apparent on the record") (citation omitted).

A. Tortious Interference with Economic Relations

The district court properly dismissed the claims against the Individual Defendants and the Company Defendants for tortious interference with economic relations. In *Eldridge v. Johndrow*, 2015 UT 21, ¶ 70, 345 P.3d 553, 565, the Utah Supreme Court stated that, to state a claim for tortious interference with economic relations, the plaintiff must allege that the defendant intentionally interfered with plaintiff's existing or potential economic relations, by improper means, and that the actions caused injury to the plaintiff. "Improper means are present 'where the means used to interfere with a party's economic relations are contrary to law, such as violations of statutes, regulations, or recognized

common-law rules.'" *St. Benedict's Dev. Co. v. St. Benedict's Hosp.*, 811 P.2d at 201 (citation omitted).

Here, Plaintiffs-Appellants allege that the improper means used by the Individual Defendants was the March 20 Letter. Plaintiffs-Appellants argue that "this directive is not limited to use of the Plaintiffs on Ute Tribal land but is rather a blanket boycott/ blacklist of Plaintiffs regardless of the situs of the business activity." (Brief of Pl.-App. at 32.) Again, Plaintiffs-Appellants' characterization of the March 20 Letter is inaccurate. The Letter states only that the oil and gas companies to whom the Letter was directed were not authorized to use Plaintiffs-Appellants' businesses in work conducted on Tribal lands; the Letter does not mention off-Reservation business activities at all. Further, the March 20 Letter was issued pursuant to the formal procedures set out in the UTERO Ordinance. Accordingly, in the Amended Complaint, Plaintiffs-Appellants failed to identify any improper means to support a claim for tortious interference with economic relations. Also, as noted by the Newfield Defendants, Plaintiffs-Appellants are required to allege interference with an existing contract between Plaintiffs and a third party. The Amended Complaint contains no such allegation. (*See* Newfield Brief at Section V.A.5.) The claim for tortious interference was properly dismissed.

B. Extortion

In the Appeal Brief, Plaintiffs-Appellants seek to support their claim for extortion, which is not recognized under Utah law. On this point, and pursuant to Rule 24(i) of the Utah Rules of Appellate Procedure, the Individual Defendants and the Company

Defendants incorporate by reference the general legal arguments advanced by the Newfield Defendants regarding extortion. (*See* Newfield Brief at Section V.A.1.a.) For the reasons set forth in the legal authorities cited by the Newfield Defendants, the Individual Defendants and the Company Defendants assert that there is no recognized private claim for extortion under Utah law.

Even if Utah did recognize a claim for extortion, however, the facts alleged in the Amended Complaint are inadequate to state a claim. The Amended Complaint alleges that "Commissioner Cesspooch attempted to extort money from Ryan in the IFA parking lot saying that he 'sure needed a good riding horse.'" (R. 557.) The Amended Complaint goes on to allege, however, that "Ryan refused to give Commissioner Cesspooch any money at that time." (R. 558.) Thus, the Amended Complaint fails to identify any property of Plaintiffs that any of the Individual Defendants or the Company Defendants allegedly obtained by extortion. Accordingly, the district court properly dismissed the claim for extortion. (R. 1780.)

C. Blacklisting

Likewise, pursuant to Rule 24(i), the Individual Defendants and the Company Defendants incorporate by reference the general arguments made by the Newfield Defendants regarding the nonexistence of a private cause of action for blacklisting under Utah law. (*See* Newfield Brief at Section V.A.2.a-b.)

Even if such a claim existed under Utah law, however, Plaintiffs have failed to allege any facts meeting the elements of the claim. There are no facts alleged in the

Amended Complaint that any of the Individual Defendants or the Company Defendants exchanged blacklists referring to Plaintiffs. *See* Utah Const., art. XVI, section 4 ("The exchange of black lists by railroad companies, or other corporations, associations or persons is prohibited."). Instead, the sole allegation is that Director Wopsock sent a letter (i.e., the March 20 Letter) to certain oil and gas companies advising that Plaintiffs-Appellants were not authorized to conduct business on Tribal land and that other companies "doing work on the Reservation" were not authorized to use Plaintiffs-Appellants' services on tribal land. (R. 53.) The district court properly dismissed the claim for blacklisting.

D. Antitrust

The district court also properly dismissed the claim for antitrust violations for failure to state a claim. The Individual Defendants and the Company Defendants join in and incorporate by reference the Newfield Defendants' general legal arguments regarding this point. (*See* Newfield Brief at Section V.A.3.a.) The key element that Plaintiffs-Appellants must allege is that there was a meeting of the minds on a common object or course of action. "Section 1 of the Sherman Act requires that there be a 'contract, combination . . . or conspiracy' between the manufacturer and other distributors in order to establish a violation." *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 761 (1984) (citing 15 U.S.C. § 1). Again, the core allegation of the Amended Complaint focuses on the March 20 Letter from UTERO Director Wopsock. The issuance of the Letter does not reflect a contract or combination between any of the parties in this case.

Rather, the Letter is simply a notification to other contractors performing work on Tribal lands that they are not authorized to do such work using Plaintiffs-Appellants' services. As the district court correctly recognized, all "that is alleged is [that] UTERO informed Newfield that [] Rocks Off was no longer allowed to conduct business on tribal land, and Newfield relayed the message to the Plaintiffs explaining that Newfield was not going to do business with Plaintiffs due to the UTERO notice." (R. 1780.) The district court properly dismissed the antitrust claim. (R. 1781.)

E. Civil Conspiracy

Finally, the district court properly determined that Plaintiffs failed to state a claim for civil conspiracy. A claim for civil conspiracy requires "(1) a combination of two or more persons, (2) an object to be accomplished, (3) a meeting of the minds on the object or course of action, (4) one or more unlawful, overt acts, and (5) damages as a proximate result thereof." *Estrada v. Mendoza*, 2012 UT App 82, ¶ 13, 275 P.3d 1024, 1029 (citation omitted). For the same reasons as set forth above, Plaintiffs-Appellants fail to allege a claim for conspiracy. There are no allegations in the Amended Complaint reflecting a combination of two or more persons, with a meeting of the minds on an object or course of action, using one or more unlawful, overt acts that resulted in damages to Plaintiffs-Appellants. The March 20 Letter advising oil and gas companies that they are not authorized to use Plaintiffs-Appellants' services in work on Tribal land does not amount to a combination with any other person or entity to commit an "unlawful" and "overt" act to damage Plaintiffs. Further, the Amended Complaint fails

to identify any underlying tort that would support a claim for civil conspiracy. Accordingly, the district court properly dismissed the claim for civil conspiracy for failure to state a claim.

V. THE AMENDED COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED WITH RESPECT TO THE COMPANY DEFENDANTS.

The district court observed that "'[t]o support a claim for relief, a plaintiff 'must have alleged sufficient facts . . . to satisfy each element of a claim.'" (R. 1785 (quoting *Tomlinson v. NCR Corp.*, 296 P.3d 760 (Utah App. Ct. 2013)).) The district court concluded that, in regard to the claims alleged against the Company Defendants, the Amended Complaint "does not assert any facts supporting the claims made against these two corporate Defendants." (R. 1785.) The court found that the Amended Complaint "only alleges facts regarding the individual Defendants' actions as individuals and as government officials of the Tribe. Consequently, the Plaintiffs have failed to state a claim upon which relief can be granted against these two corporate Defendants." (*Id.*)

In their Appeal Brief, Plaintiffs-Appellants do not challenge the legal principle upon which the district court based its holding but instead seek to rebut this finding by quoting various references to the Company Defendants in the Amended Complaint. However, a review of those quotations reinforces the district court's findings; not a single one sets out facts that allege an action by either or both of the Company Defendants. They only allege actions by their owners (*see, e.g.*, "That LaRose, as [an] owner of Larose Construction . . . conspired to receive an economic interest in a competing gravel

pit . . ." and "Cesspooch, LaRose and Director Wopsock conspired to . . . ."). (Brief of Pl.-App. at 43-44.) The only action the Company Defendants are alleged to have taken is to "participate in the conspiracy" (*id.* at 44) – a conclusionary statement that clearly failed to satisfy any, much less each, element of the claims made against the Company Defendants. This Court should therefore should uphold the district court's dismissal of the Amended Complaint against the Company Defendants under Rule 12(b)(6).

VI. THE DISTRICT COURT PROPERLY DENIED PLAINTIFFS-APPELLANTS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL PLEADING.

The Individual Defendants and the Company Defendants hereby join in the arguments raised in Section V.C of the Newfield Defendants' brief regarding the district court's disposition of Plaintiffs-Appellants' motion for leave to file a supplemental pleading. For the reasons set forth by the Newfield Defendants, the district court did not abuse its discretion in denying the motion. Accordingly, this Court should affirm the district court's order denying the motion.

CONCLUSION

This Court should affirm the dismissal of all causes of action against the Individual Defendants and the Company Defendants.

CERTIFICATE OF COMPLIANCE WITH UTAH RULE OF APPELLATE PROCEDURE 24(f)(1)

This brief complies with the type-volume requirements of Utah Rule of Appellate Procedure 24(f)(2)(A). The brief contains 8,470 words[5]. This brief complies with the typeface requirements of Rule 27(b) because it was prepared using a proportionally spaced typeface with size 13 font and Times New Roman font style.

DATED this 30th day of November 2016.

Jones Waldo Holbrook & McDonough, P.C.

Craig H. Howe
Deborah R. Chandler

Daniel S. Press
Van Ness Feldman, LLP

Attorneys for Defendants/Appellees Dino Ray Cesspooch, Jackie LaRose, and Sheila Wopsock in their individual capacities and D. Ray C. Enterprises L.L.C. and LaRose Construction Company, Inc.

[5] As calculated by the word processing system pursuant to Utah R. App. P 24(f)(1)(C).

CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of November 2016, two true and correct copies of the foregoing **BRIEF OF APPELLEES DINO RAY CESSPOOCH, JACKIE LaROSE, AND SHEILA WOPSOCK IN THEIR INDIVIDUAL CAPACITIES AND D. RAY C. ENTERPRISES L.L.C. AND LaROSE CONSTRUCTION COMPANY, INC.** was delivered to the following by:

Clark B. Allred
Allred, Brotherson & Harrington, P.C.
72 North 300 East (123-14)
Roosevelt, UT 84066

John D. Hancock
John D. Hancock Law Group, PLLC
72 North 300 East, Suite A (123-13)
Roosevelt, UT 84066

J. Preston Stieff
J. Preston Stieff Law Offices
136 East South Temple, Ste 2400
Salt Lake City, UT 84111

Christopher R. Hogle
Karina Sargsian
Holland & Hart, LLP
222 S. Main Street, Suite 200
Salt Lake City, UT 84101

Patrick S. Boice
HATCH & BOICE
1457 East 3300 South
Salt Lake City, Utah 84106

[ ] Hand Delivery

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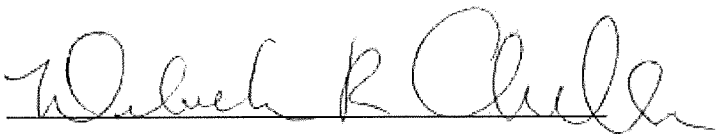

EXHIBIT A

Ute Indian Tribe
UTERO Commission
P.O. Box 190
Fort Duchesne, UT 84026
Phone: (435) 725-4982

March 20, 2013

To all Oil & Gas Companies:

Please be advised that on March 15, 2013, the Tribal Energy and Minerals Department revoked the access permits for the following businesses and individuals:

- J. Brothers Trucking & Excavation, LLC – Justin Justice, Benjamin Justice and Thomas Justice
- Rocks Off, Inc – Ryan Harvey

As a result, the UTERO Commission revoked the UTERO License for these businesses and individuals for failure to comply with the UTERO Ordinance, Ord. No. 10-002 (July 27, 2010).

As a result of such action, these businesses and individuals are no longer authorized to perform work on the Uintah and Ouray Reservation. Any use of these businesses and individuals by an employer doing work on the Reservation after receipt of this Notice may result in the assessment of penalties and/or sanctions against such employer to the fullest extent of the law.

If you should have any questions on the UTERO Commission decision please feel free to contact the UTERO Department at (435) 725-7086.

Sincerely,

Sheila Wopsock
UTERO Director

cc: Business Committee (6)
Energy & Minerals Dept.
UTBC General Counsel