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

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UTE INDIAN TRIBE OF THE UINTAH &  
 OURAY RESERVATION, a federally  
 recognized Indian tribe, et al.,

Plaintiffs,

v.

HONORABLE BARRY G. LAWRENCE,  
 District Judge, Utah Third Judicial  
 District Court, in his Individual and  
 Official Capacities, and LYNN D.  
 BECKER,

Defendants.

**PLAINTIFFS' MOTION  
 TO ENFORCE INJUNCTION,  
 ISSUE AN ORDER TO SHOW CAUSE,  
 AND IMPOSE CONTEMPT  
 SANCTIONS**

Case No.  
 2:16-cv-00579

Senior Judge Tena Campbell

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Plaintiffs, the Ute Indian Tribe of the Uintah and Ouray Reservation and affiliated parties (“Tribal Plaintiffs”), move the Court for (i) enforcement of the permanent injunction entered in this case on February 28, 2022, ECF No. 240; (ii) issuance of an order to show cause why Defendant Becker should not be held in contempt of court; and (iii) imposition of sanctions on Becker, including attorney fees, both to compensate Plaintiffs for the costs incurred in prosecuting this enforcement action and to insure future compliance with the 2022 permanent injunction. As grounds, Plaintiffs state:

The permanent injunction in this case states, in pertinent part:

[T]he Tenth Circuit held that the Utah state court lacks subject matter jurisdiction over Lynn D. Becker’s suit in the State of Utah, Third Judicial District Court, Lynn Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation, et al., No. 140908394....

\* \* \* \*

WHEREFORE, it is hereby ORDERED as follows:

\* \* \* \*

The Defendants are permanently enjoined from taking any action in the Becker state court suit, *except to dismiss the suit for lack of subject-matter jurisdiction.*

Permanent Injunction Order, Feb. 2, 2022, ECF No. 240 (emphasis added).

Following entry of the permanent injunction, Mr. Becker sought certiorari review before the United States Supreme Court, however, the Supreme Court denied certiorari last fall. *Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation*, 143 S. Ct. 273 (Mem) (2022).

On June 7, 2023, the Tribal Plaintiffs filed a motion to dismiss Mr. Becker’s state court lawsuit, *Lynn Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation, et*

*al.*, No. 140908394. Exhibit A.

On June 20, 2023, Mr. Becker filed an Opposition to Defendants' Motion for Dismissal of the Becker state court suit. Exhibit B.

Mr. Becker's action in actively opposing dismissal of the state court suit has delayed the dismissal of that suit, and has forced the Tribe to expend attorney time and resources in responding to Becker's objection to the Tribe's motion for dismissal and in seeking enforcement of this Court's permanent injunction.

Because the injunction in this case expressly enjoins Mr. Becker "from taking any action in the Becker state court suit, *except to dismiss the suit for lack of subject-matter jurisdiction*," Mr. Becker's action in affirmatively opposing the Tribal Plaintiffs' motion to dismiss constitutes an open, flagrant, and willful violation of the permanent injunction.

### LEGAL ARGUMENT

The continued pendency of the Utah state lawsuit is a source of ongoing *irreparable* harm to the Ute Tribe and its officers. The Tenth Circuit acknowledged that irreparable harm to the Tribe and its officers in the Court's 2022 decision in this case, stating:

[W]e have no trouble concluding that the Tribe satisfies all four requirements for a permanent injunction. On the first element, we have already explained why the Tribe succeeds on its claim that the Utah state court lacks jurisdiction. And because the Tribe, with its "sovereign status," "should not be compelled 'to expend time and effort on litigation in a court that does not have jurisdiction,' " it satisfies the second requirement of irreparable harm. *Hoover*, 150 F.3d at 1171–72 (quoting *Seneca-Cayuga Tribe of Okla. v. Okla. ex rel. Thompson*, 874 F.2d 709, 716 (10th Cir. 1989)).

The Tribe likewise satisfies the third requirement, that the injury to the Tribe "outweighs the harm that the injunction may cause" to Becker. *Wagnon*, 476 F.3d at 822 (quoting *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1180 (10th Cir. 2003)). Though granting the injunction will leave Becker

unable to sue the Tribe in state court—“something [he] ha[d] no legal entitlement to do in the first place,” given our conclusion that Congress has not authorized jurisdiction—this harm does not outweigh the damage to tribal sovereignty that would result from denying the injunction. *Ute Indian Tribe of the Uintah & Ouray Rsrv. v. Utah*, 790 F.3d 1000, 1005 (10th Cir. 2015); see also *id.* (weighing this factor in favor of granting temporary injunction because doing so would only prevent state defendants from prosecuting tribal members).

Fourth, enjoining the state-court action will not adversely affect the public interest. See *Wagon*, 476 F.3d at 822. In the district court, Becker argued otherwise based on Utah’s alleged interest in adjudicating novel contract disputes between tribes and private parties that are governed by Utah law. But again, Utah had no such interest to begin with: This contract dispute arose on the reservation, and the federal-law prerequisites for state-court jurisdiction are not met. In sum, because the Tribe has shown all the required elements, it is entitled to a permanent injunction against Becker’s state-court lawsuit.

*Ute Indian Tribe of the Uintah and Ouray Reservation v. Lawrence*, 22 F.4th 892, 909-10 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 273 (Mem) (2022).

The Due Process Clause of the United States Constitution, applicable to the States through the Fourteenth Amendment, prevents a party from being deprived of life, liberty, or property through the exercise of unlawful power. The Due Process Clause is a constitutional guarantee that parties will only be subjected to “lawful” acts of authority. *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 889 (2011). The Due Process Clause “protect[s] a person against having the Government impose burdens upon him *except in accordance with the valid laws of the land.*” *Id.* (emphasis added) (quoting *Giaccio v. Pennsylvania*, 382 U.S. 399, 408 (1966)). “This is no less true with respect to the power of a sovereign to resolve disputes through judicial process than with respect to the power of a sovereign to prescribe rules of conduct for those within its sphere.” *Id.* (citing *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 94 (1998) (“Jurisdiction

is power to declare the law.”). See *also* Restatement (Second) of Conflict of Laws § 24 cmt. b (“One basic principle underlies all rules of Jurisdiction. This principle is that a state does not have jurisdiction in the absence of some reasonable basis for exercising it.”); Restatement (Second) of Conflict of Laws § 24 cmt. e (“In the United States, the due process clause of the Fourteenth Amendment of the Constitution prohibits the States from acting through their courts when they have no judicial jurisdiction.... Since the extent of judicial jurisdiction of the United States and of the individual States is a constitutional question, the decisions of the Supreme Court of the United States is controlling.”) (underscore added).

The irreparable harm to the Tribal Plaintiffs identified in the Tenth Circuit’s 2022 decision in *Lawrence* is compounded each day that Mr. Becker’s state court lawsuit is not dismissed.

WHEREFORE, based on the facts and authorities cited herein, Plaintiffs move the Court for (i) an order directing Defendant Baker to show cause why he should not be held in contempt of court for violating the 2022 permanent injunction; (ii) an order enforcing the Court’s permanent injunction; and (iii) imposing sanctions on Becker in an amount sufficient to compensate the Tribal Plaintiffs for the harm they have suffered and to insure future compliance with the injunction order. A draft show cause order, attached hereto, will be submitted to the Court’s Chamber.

Respectfully submitted this 27th day of June, 2023.

PATTERSON EARNHART REAL BIRD & WILSON LLP

*s/ Frances C. Bassett*

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**EXHIBIT A**

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**This motion requires you to respond. Please see the Notice to Responding Party.**

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*Attorneys for Defendants*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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Lynn D. Becker,

Plaintiff,

v.

Ute Indian Tribe of the Uintah and Ouray  
Reservation, et al.,

Defendants.

**DEFENDANTS' MOTION  
FOR DISMISSAL**

Case No. 140908394  
JUDGE BARRY LAWRENCE

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Pursuant to Rule 7 of the Utah Rules of Civil Procedure, the Defendants respectfully move for dismissal of this action.



## RELIEF REQUESTED AND GROUNDS FOR RELIEF

Defendants request that this case be dismissed. The grounds for this request are the decision of the United States Court of Appeals for the Tenth Circuit in *Ute Indian Tribe of the Uintah and Ouray Reservation v. Lawrence*, 22 F.4th 892 (10th Cir. 2022), *cert denied*, 143 S. Ct. 273 (Mem) (2022), and the permanent injunction entered by the United States District Court for the District of Utah in *Ute Indian Tribe of the Uintah and Ouray Reservation v. Lawrence, et al.*, case number 2:16-cv-00579, ECF No. 240.

## ARGUMENT

Following the decision of the United States Court of Appeals for the Tenth Circuit in *Ute Indian Tribe of the Uintah and Ouray Reservation v. Lawrence*, 22 F.4th 892 (10th Cir. 2022), *cert denied*, 143 S. Ct. 273 (Mem) (2022), the United States District Court for the District of Utah in *Ute Indian Tribe of the Uintah and Ouray Reservation v. Lawrence, et al.*, case number 2:16-cv-00579, ECF No. 240, entered a permanent injunction, a copy of which is attached and incorporated herein, Exhibit A. Pursuant to the federal district court's permanent injunction, this case must be dismissed.

Dated this 5<sup>th</sup> day of June 2023.

J. PRESTON STIEFF LAW OFFICES, LLC

/s/ J. Preston Stieff

J. Preston Stieff

PATTERSON EARNHART REAL BIRD &  
WILSON LLP

/s/ Frances C. Bassett

Frances C. Bassett, *Admitted Pro Hac Vice*  
Thomasina Real Bird, *Admitted Pro Hac Vice*  
*Attorneys for Defendants*

## CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of June, 2023, I caused a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR DISMISSAL** with the Clerk of the Court using the electronic filing system which will send notification of such filing to all parties of record as follows:

David K. Isom  
ISOM LAW FIRM PLLC  
299 South Main Street, Suite 1300  
Salt Lake City, Utah 84111

/s/ J. Preston Stieff  
J. Preston Stieff

### Notice to responding party

You have a limited amount of time to respond to this motion. In most cases, you must file a written response with the court and provide a copy to the other party:

- within 14 days of this motion being filed, if the motion will be decided by a judge, or
- at least 14 days before the hearing, if the motion will be decided by a commissioner.

In some situations a statute or court order may specify a different deadline.

If you do not respond to this motion or attend the hearing, the person who filed the motion may get what they requested.

See the court's Motions page for more information about the motions process, deadlines and forms:

[utcourts.gov/motions](https://utcourts.gov/motions)



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### Aviso para la parte que responde

Su tiempo para responder a esta moción es limitado. En la mayoría de casos deberá presentar una respuesta escrita con el tribunal y darle una copia de la misma a la otra parte:

- dentro de 14 días del día que se presenta la moción, si la misma será resuelta por un juez, o
- por lo menos 14 días antes de la audiencia, si la misma será resuelta por un comisionado.

En algunos casos debido a un estatuto o a una orden de un juez la fecha límite podrá ser distinta.

Si usted no responde a esta moción ni se presenta a la audiencia, la persona que presentó la moción podría recibir lo que pidió.

Vea la página del tribunal sobre Mociones para encontrar más información sobre el proceso de las mociones, las fechas límites y los formularios: Para acceder esta página



### **Finding help**

The court's Finding Legal Help web page ([utcourts.gov/help](http://utcourts.gov/help))

provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.



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[utcourts.gov/motions-span](http://utcourts.gov/motions-span)

### **Cómo encontrar ayuda legal**

La página de la internet del tribunal Cómo encontrar ayuda legal

([utcourts.gov/help-span](http://utcourts.gov/help-span))

tiene información sobre algunas maneras de encontrar ayuda legal, incluyendo el Centro de Ayuda de los Tribunales de Utah, abogados que ofrecen descuentos u ofrecen ayuda legal limitada, y talleres legales gratuitos.



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## **EXHIBIT A**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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UTE INDIAN TRIBE OF THE UINTAH & OURAY RESERVATION, a federally recognized Indian Tribe and a federally chartered corporation, the UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE, and UTE ENERGY HOLDINGS LLC, a Delaware LLC,

Plaintiffs,

v.

HONORABLE BARRY G. LAWRENCE, District Judge, Utah Third Judicial District Court, in his Individual and Official Capacities, and LYNN D. BECKER,

Defendants.

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**PERMANENT INJUNCTION**

Case No. 2:16-cv-00579-TC

District Judge Tena Campbell

The Plaintiffs commenced this action on June 13, 2016, and thereafter filed an amended complaint on June 17, 2016. (ECF No. 4.) The case was twice appealed to the United States Court of Appeals for the Tenth Circuit, which issued decisions in 2017 and 2022. Ute Indian Tribe of the Uintah & Ouray Rsrv. v. Lawrence (Lawrence I), 875 F.3d 539 (10th Cir. 2017); Ute Indian Tribe of the Uintah & Ouray Rsrv. v. Lawrence (Lawrence II), 22 F.4th 892 (10th Cir. 2022).

In its most recent decision, the Tenth Circuit held that the Utah state court lacks subject-matter jurisdiction over Lynn D. Becker’s suit in the State of Utah, Third Judicial District Court, Lynn Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation, et al., No. 140908394 (“Becker state court suit”). And because the state court lacks subject-matter jurisdiction, the Tenth Circuit directed this court to enter an order “permanently enjoining” the Becker state court suit. Lawrence II, 22 F.4th at 911.

THEREFORE, it is hereby ORDERED as follows:

1. This court has subject-matter and personal jurisdiction here.
2. The Defendants are permanently enjoined from taking any action in the Becker state court suit, except to dismiss the suit for lack of subject-matter jurisdiction.
3. This court retains jurisdiction over this action to enforce or modify this permanent injunction and to grant such additional relief as may be necessary or appropriate.

DATED this 28th day of February, 2022.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
United States District Judge

**EXHIBIT B**

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**Counsel for Plaintiff Lynn D. Becker**

---

**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

---

LYNN D. BECKER,  
  
Plaintiff,

v.

UTE INDIAN TRIBE OF THE UINTAH  
AND OURAY RESERVATION, a federally  
chartered corporation; UTE INDIAN  
TRIBE OF THE UINTAH AND OURAY  
RESERVATION, a federal recognized  
Indian tribe; the UINTAH AND OURAY  
TRIBAL BUSINESS COMMITTEE; and  
UTE ENERGY HOLDINGS, LLC, a  
Delaware LLC,

Defendants.

**BECKER’S OPPOSITION TO  
DEFENDANTS’ MOTION FOR  
DISMISSAL**

Case No. 140908394

Judge Barry G. Lawrence

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**RELIEF REQUESTED AND GROUNDS FOR RELIEF**

Plaintiff Lynn D. Becker opposes defendants’ June 5, 2023 Motion for Dismissal. Defendants’ claim is wrong that the federal injunction issued on February 28, 2022 (“Injunction”) requires that this action be dismissed. It does not. The Injunction merely orders Becker not to take further action in this case other than moving to dismiss the case. But Becker has not moved and does not move to dismiss.



Defendants offer no reason for dismissing the action now. As Becker shows below, a dismissal now could seriously prejudice Becker.

Becker requests that the Court deny defendants' Motion.

### **ARGUMENT**

This dispute has been pending for more than a decade. Becker timely filed the first action in February 2013 in federal court. He brought this action in December 2014 after the Tenth Circuit ruled that there was no federal jurisdiction. The federal district court entered the Injunction at issue here in February 2022. Defendants do not explain why, 16 months after the Injunction entered, it is suddenly important that this action be dismissed.

But there is good reason not to dismiss this action now. Until Becker's claims are fully and finally resolved in whatever court finally emerges as the court with power to adjudicate Becker's claims, this Court should not dismiss this action.

After exhaustive and exhausting actions in state, federal and tribal trial and appellate courts, the dispute is currently at issue solely in the Ute tribal court. Once tribal court remedies are exhausted, the matter will return to federal court, including another possible review by the Tenth Circuit, and then possibly by the United States Supreme Court.

Though remote, it is possible that the dispute could return to this Court. In the Injunction, Judge Tena Campbell retained jurisdiction to modify the Injunction. If the federal appellate courts were to decide in future proceedings that this Court has jurisdiction, the Injunction would be modified to allow or require adjudication in this Court.

In that event, this Court and Judge Lawrence should adjudicate the case, given that they have invested untold hours reviewing and adjudicating many of the factual and legal issues in the case.

Dismissal now would prejudice Becker by possibly eliminating or limiting Becker's right to return to this Court.

Utah's "savings statute," Utah Code Ann. §78B-2-111, provides:

- (1) If any action is timely filed and ... the plaintiff fails in the action or upon a cause of action otherwise than upon the merits, and the time limited ... for commencing the action has expired, the plaintiff ... may commence a new action within one year after the ... failure.
- (2) [A] new action may be commenced under this statute only once.

Though the application of this statute is uncertain under the circumstances here,<sup>1</sup> a dismissal now would create the risk that Becker's right to litigate his claims in this Court might be barred within a year after the dismissal. See *Norton v. Hess*, 374 P.3d 49, 51-52 (Utah App. 2016) (under the savings statute, the claims of a plaintiff whose claims were timely filed and then dismissed other than on the merits, are barred if not filed within a year of the dismissal}. As applied here, it is almost certain to take more than a year for the tribal and then the federal courts to finally determine whether Becker's claims can be litigated in this Court. Becker should not lose his right to litigate in this Court while other courts are deciding that this Court has jurisdiction over Becker's claims.

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<sup>1</sup> The pendency of the claims in the federal and tribal courts may make the statute inapplicable and may affect the determination of when and if Becker's claims have "failed" within the meaning of this statute. The very uncertainty of these issues creates unwarranted risk to Becker that this Court can and should prevent by not dismissing this action now.

Becker will continue to press his claims as speedily as possible to resolution, and he will notify this Court when a federal court fully and finally determines which forum has jurisdiction to adjudicate his claims. In the meantime, this Court should not dismiss this action.<sup>2</sup>

DATED: June 20, 2023.

**ISOM LAW FIRM PLLC**

/s/ David K. Isom

David K. Isom

***Counsel for Plaintiff***

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<sup>2</sup> If and when it is finally determined that Becker's claims are to be adjudicated in another forum, Becker will promptly notify this Court. The case can and should be dismissed at that time. Of course, any dismissal before then must be a dismissal without prejudice.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of June, 2023, I caused a true and correct copy of **BECKER'S OPPOSITION TO DEFENDANTS' MOTION FOR DISMISSAL** to be served via the Court's electronic notification system.

/s/ David K. Isom

**Proposed Show Cause Order**

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

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, a federally recognized Indian Tribe; UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, a federal corporation; the UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE, SHAUN CHAPOOSE, Chairman of the Uintah and Ouray Tribal Business Committee, and UTE ENERGY HOLDINGS LLC, a Delaware LLC,

Plaintiffs,

v.

HONORABLE BARRY G. LAWRENCE, District Judge, Utah Third Judicial District Court, in his Individual and Official Capacities, and LYNN D. BECKER,

Defendants.

**UTE INDIAN TRIBE’S  
[PROPOSED]  
ORDER TO SHOW CAUSE**

Case No.  
2:16-cv-00579

Senior Judge Tena Campbell

On February 2, 2022, the Court entered a permanent injunction in this case, ECF No. 240, which states, in pertinent part:

[T]he Tenth Circuit held that the Utah state court lacks subject matter jurisdiction over Lynn D. Becker’s suit in the State of Utah, Third Judicial District Court, Lynn Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation, et al., No. 140908394....

\* \* \* \*

WHEREFORE, it is hereby ORDERED as follows:

\* \* \* \*

The Defendants are permanently enjoined from taking any action in the Becker state court suit, *except to dismiss the suit for lack of subject-matter jurisdiction*. Permanent Injunction Order, Feb. 2, 2022, ECF No. 240 (emphasis added).

Plaintiffs have now filed a motion which seeks (i) enforcement of the permanent injunction; (ii) issuance of an order to show cause why Defendant Becker should not be held in contempt of court; and (iii) imposition of sanctions on Becker, including attorney fees, both to compensate Plaintiffs for the costs incurred in prosecuting this enforcement action and to insure future compliance with the 2022 permanent injunction.

Attached to the Plaintiffs' motion are copies of (i) a motion Plaintiffs filed in Mr. Becker's state court suit, Becker v. Ute Indian Tribe, No. 140908394, seeking dismissal of the state court suit for lack of subject-matter jurisdiction, and (ii) an opposition to the dismissal motion filed by Mr. Becker.

In their motion for enforcement, issuance of a show cause order and sanctions, Plaintiffs contend that Mr. Becker's action in opposing dismissal of the state court suit violates the express terms of this Court's permanent injunction, prohibiting the Defendants "from taking any action in the Becker state court suit, except to dismiss the suit for lack of subject-matter jurisdiction." ECF No. 240.

The Court Having reviewed Plaintiffs' motion, and the pleadings in Becker v. Ute Indian Tribe, No. 140908394, attached as exhibits to Plaintiffs' motion, Mr. Becker is **HEREBY ORDERED TO, WITHIN FOURTEEN (14) DAYS OF THE ENTRY OF THIS ORDER,** respond to Plaintiffs' motion and **SHOW CAUSE** why sanctions should not be imposed against him for violating the Court's permanent injunction order. Plaintiffs shall thereafter have **FOURTEEN (14) DAYS** to respond to Mr. Becker's filing.

After the court receives all briefing ordered herein, it shall review the briefs, take the matter under consideration, and notify the parties how the Court intends to proceed.

SO ORDERED.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2023.

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TENA CAMPBELL  
United States Senior District Judge