

As directed by the Court at the hearing on August 9, 2023, Plaintiffs, the Ute Indian Tribe of the Uintah and Ouray Reservation and affiliated parties (“Tribal Plaintiffs”), submit their Statement of Attorney Fees from undersigned counsel, attached as Exhibits 1-A and 1-B,¹ and supporting memorandum.

Plaintiffs seek attorney fees that were incurred in (i) responding to Mr. Becker’s objection to Plaintiffs’ motion to dismiss his state court suit, *Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation, et al.*, No. 140908394, and (ii) as a sanction for Mr. Becker’s open violation of this Court’s permanent injunction, ECF No. 240.

FACTUAL BACKGROUND

At the court hearing on August 9, 2023, the parties and their counsel learned for the first time that the Utah state court had dismissed Mr. Becker’s state court suit on July 5, 2023. A copy of the dismissal order and its August 10, 2023 transmittal email to the parties’ counsel is attached as Exhibit 2. The dismissal order contains no certificate of service and was never served on the parties by the state court clerk’s office, electronically or conventionally by mail.² While the July 5th dismissal order obviously moots the Plaintiffs’ motion to enforce the permanent injunction, Plaintiffs still seek the attorney fees they incurred as a sanction for Mr. Becker’s violation of the injunction.

¹ Exhibit 1-A is the Statement of the Tribe’s General Counsel, Patterson Earnhart Real Bird & Patterson LLC, and Exhibit 1-B is the Statement of the Tribe’s local counsel, J. Preston Stieff.

² Rule 5(a)(1)(B) of the Utah Rules of Civil Procedure identifies the court papers that “must be served on every party;” however, it only requires service of those court “orders” which specify that the order “must be served.” The state court’s 7/5/2023 dismissal order did not specify that the order “must be served” on the parties, and the order itself contains no certificate of service to the parties. In response to inquiries from Plaintiffs’ counsel, the Utah state court subsequently emailed a copy of the dismissal order to the parties’ counsel on August 10, 2023 (albeit that email was incorrectly sent to the former email addresses for Attorneys Frances Bassett and Thomasina Real Bird, not their current email addresses, which were provided to the state court on June 1, 2020).

To assist the Court in appreciating the Plaintiffs' request for attorney fees, the following chronology is useful:

June 5, 2023 - the Tribal Plaintiffs filed a concise two-paragraph motion to dismiss the Becker state court suit for lack of subject matter jurisdiction, citing the Tenth Circuit decision 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 in this case, ECF No. 240.

June 20, 2023 – Mr. Becker filed a four-page opposition to the state court motion to dismiss, citing the Utah savings statute, Utah Code Ann. § 78B-2-111.

June 27, 2023 – the Tribal Plaintiffs filed a seven-page reply memorandum with the state court. The Tribal Plaintiffs also filed in this Court a Motion to Enforce Injunction, Issue Order to Show Cause and Impose Contempt Sanctions, ECF No. 271.

July 5, 2023 – the Utah state court issued its order dismissing the suit for lack of jurisdiction, however, the order did not direct the court to serve the order on the parties and the order itself contains no certificate of service to the parties.

July 10, 2023 – Mr. Becker filed a five page objection to the Tribal Plaintiffs' Motion to Enforce Injunction, Issue Order to Show Cause and Impose Contempt Sanctions, ECF No. 272. Mr. Becker disputed that he had violated the injunction and he cited *C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411 (2001), Defs' Resp., ECF No. 272 PageID.8116-17, for the unfounded suggestion that it is the Tribal Plaintiffs' position that "no court has jurisdiction of the dispute 'on earth or even on the moon.'" *Id.*

July 25, 2023 – the Tribe filed a reply memorandum in support of its motion to enforce and sanction, together with a request to submit for hearing.

August 1, 2023 – the Court set the matter for a Zoom hearing on August 9, 2023.

August 9, 2023 – the parties and their counsel learned for the first time that the Utah state court had entered an order dismissing the state court suit on July 5, 2023, for lack of subject matter jurisdiction.

LEGAL ARGUMENT

The court may award Plaintiffs their attorney fees under an exception to the American Rule which allows a court to “assess attorney’s fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” *Martinez v. Roscoe*, 100 F.3d 121, 123 (10th Cir. 1996) (affirming an award of attorney fees for the defendant’s violation of a permanent injunction) (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 55 (1991)).

As Plaintiffs emphasized in their motion and reply memoranda, ECF Nos. 271 and 273, following the United States Supreme Court’s denial of Mr. Becker’s petition for certiorari, there was no good faith basis in fact or law for Mr. Becker to actively oppose Plaintiffs’ motion to dismiss the state court suit for lack of subject matter jurisdiction. Yet, not only did Becker oppose the Plaintiffs’ dismissal motion, but he implausibly insists to this Court that in opposing dismissal, he was not in open violation of this Court’s permanent injunction. That argument is simply not credible. The permanent injunction states, clearly and unambiguously, that:

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). Notably, even the state court found there was no good faith basis for Mr. Becker's opposition to dismissal, the state court characterizing Mr. Becker's argument to the state court as "speculative" at best "if not fanciful." See Exhibit 2, page 2.

And while the state court dismissed the state court suit on July 5, 2023, neither Becker nor Plaintiffs were served with notice of the dismissal, and five days after the dismissal, Becker filed a five page memorandum with this Court, objecting to the Plaintiffs' motion to enforce the injunction and impose sanctions. The sole authority cited in Becker's federal court objection was *C & L Enterprises*, which was cited for an unwarranted *ad hominem* attack on the Plaintiffs, Becker arguing, without basis, that it is Plaintiffs' position that "no court has jurisdiction of the dispute 'on earth or even on the moon.'" *Id.* Defs' Resp., ECF No. 272 PageID.8116-17.

Mr. Becker's unprincipled objection to enforcement of the injunction obviously necessitated a reply from the Plaintiffs.

CONCLUSION

There was no good faith basis for Mr. Becker to oppose either (i) Plaintiffs' motion to dismiss his state court suit, *Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation, et al.*, No. 140908394, or (ii) the Plaintiffs' federal court motion to enforce the permanent injunction in this case. Becker's actions resulted in an unnecessary expenditure of judicial and litigant time, money and resources. Therefore, Plaintiffs respectfully request that they be awarded the attorney fees they had to incur as set forth in Exhibits 1-A and 1-B.

Respectfully submitted this 16th day of August, 2023.

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s/ Frances C. Bassett

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