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*Attorney for Plaintiffs,  
Shivwits Band of Paiute Indians and  
Kanosh Band of Paiute Indians*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, SOUTHERN DIVISION

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SHIVWITS BAND OF PAIUTE INDIANS,	)	
a federally recognized Indian tribe;	)	
	)	
KANOSH BAND OF PAIUTE INDIANS,	)	Civil Action No. 4:20-cv-00009-DN
a federally recognized Indian tribe;	)	
	)	
<i>Plaintiffs,</i>	)	
	)	COMPLAINT
v.	)	
	)	
TAMRA BORCHARDT-SLAYTON,	)	
in her official capacity as Tribal	)	
Chairperson of the Paiute Indian Tribe of	)	
Utah;	)	
	)	
<i>Defendant.</i>	)	

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Plaintiffs, Shivwits Band of Paiute Indians (“Shivwits Band”) and Kanosh Band of Paiute Indians (“Kanosh Band”), by and through their attorneys, hereby state and allege as follows:

**INTRODUCTION**

1. This action is brought by two federally recognized Indian tribes with governing bodies duly recognized by the United States, and arises out of the *ultra-vires* actions of the

Defendant, Tamra Borchardt-Slayton (“Defendant”), which have deprived Plaintiffs of their sovereignty along with their Constitutional and statutory rights. This action seeks prospective declaratory and injunctive relief from the unlawful actions of the Defendant.

2. This action concerns ongoing and escalating problems affecting vulnerable members of Plaintiff tribes and caused by the *ultra vires* acts of Defendant taken against sovereign tribes of Southern Paiute Indians.

3. Plaintiffs elected<sup>1</sup> to adopt an Indian Reorganization Act Constitution to participate in a cooperative multi-band government but the acting Chairperson of the multi-band government, Defendant, has engaged in unilateral retaliatory actions, culminating in an administrative coup d’état where elected representatives who dare contradict her are obstructed and eventually removed from power.

4. The Paiute Indian Tribe of Utah (“PITU”) is a joint governance entity created by and comprised of five constituent Bands of Southern Paiutes. Each of the five Bands is an Indian Tribe exercising powers of self-government. The five Bands voted to adopt a cooperative multi-band government, PITU, and in doing so, delegated some of their powers of self-government to PITU while retaining all those powers of self-government which they had not expressly delegated. The entity that carries out the powers delegated to PITU is the PITU Council, which is supposed to be composed of elected representatives of each constituent Band.

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<sup>1</sup> The Bands’ position is that the multi-Band Constitution was not lawfully adopted or amended because Bands did not separately vote to join the multi-Band entity now known as the PITU. The Bands do not believe the Court will need to resolve that issue in order to resolve the issues presented in this action, but the Bands will present that separate argument in the alternative if necessary in order to resolve this appeal.

5. Plaintiffs are two of the five constituent Bands of PITU whose elected leaders have been obstructed, and ultimately removed from power by Defendant in politically motivated, retaliatory attacks for standing up for their Bands' sovereignty and the integrity of the PITU Tribal Constitution.

6. Defendant's acts have imposed a new, illegitimate form of government on PITU that violates federal law and deprives Plaintiffs and Plaintiffs' members, who collectively compose approximately fifty (50) percent of PITU's membership, of the "inalienable right to full and effective participation in the political process" of his or her government. *Reynolds v. Sims*, 377 U.S. 533, 565 (1964).

7. Plaintiffs have sought recourse through tribal government mechanisms for over two years to no avail due to Defendant's conduct. Plaintiffs now ask this Court to shine the light of the law on the shadows of sovereignty that exist when a jilted Tribal political official is able to wield power with impunity while disregarding tribal and federal law.

### **THE PARTIES**

8. Plaintiff Shivwits Band of Paiute Indians is a federally recognized Indian Tribe and constituent Band of the Paiute Indian Tribe of Utah, with its headquarters located near Ivins, Utah.

9. Plaintiff Kanosh Band of Paiute Indians is a federally recognized Indian Tribe and constituent Band of the Paiute Indian Tribe of Utah, with its headquarters located in Kanosh, Utah.

10. Defendant Tamra Borchardt-Slayton is not a member, employee, or officer of the Shivwits Band or the Kanosh Band. She is currently the acting Chairperson of the PITU Council, which transacts business and acts on behalf of PITU in matters within its authority.

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over this suit under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1362 (federal question brought in a suit by an Indian Tribe) because this is a civil action brought by an Indian tribe that arises under the Constitution, laws, and treaties of the United States, including the United States Constitution, the Paiute Restoration Act, and the Indian Reorganization Act.

12. Venue is appropriate in the United States District Court for the District of Utah pursuant to 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to the claims herein have occurred within the southern division of this judicial district.

13. This action is not barred by the doctrine of sovereign immunity because Plaintiffs seek prospective relief to enjoin a tribal official, acting outside the scope of their authority, from enforcing orders and exercising authority in contravention of controlling federal law. *See Ex parte Young*, 209 U.S. 123 (1908); *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140 (10<sup>th</sup> Cir. 2011); and because an individual cannot assert sovereign immunity against the sovereign who is bringing suit, here the Shivwits and Kanosh Bands.

### **STATEMENT OF FACTS**

#### **I. Shivwits Band of Paiute Indians**

14. The Shivwits Band of Paiute Indians has been a sovereign Indian tribe since time immemorial. The Band was first officially recognized by the United States in 1891 when the United States Congress provided for the acknowledgement and support of the Shivwits Band of

Paiute Indians and appropriated moneys for the purchase of improvements on lands along the Santa Clara River, in present-day Utah, for the Band's use. Act of March 3, 1891, 26 Stat. L. 989-1005.

15. In 1916, approximately 26,880 acres in the same area outside of modern-day St. George, Utah were set aside as a Reservation for the Shivwits Band by Executive Order dated April 21, 1916. Congress added an additional 1,280 acres to the Reservation on May 28, 1937. Act of May 28, 1937, 50 Stat. 239-240.

16. Pursuant to its status as a federally recognized Indian tribe eligible to receive federal benefits and services, the Band voted to accept the Indian Reorganization Act of 1934, 48 Stat. 984 ("IRA"), on November 17, 1934. On March 21, 1940, the Secretary of the Interior approved the *Constitution and By-laws of the Shivwits Band of Paiute Indians of the Shivwits Reservation of Utah*, which officially organized the Band under the IRA.

17. In 1940, the Shivwits Band of Paiutes was an independent, federally recognized Tribe.

## **II. Kanosh Band of Paiute Indians**

18. The Kanosh Band of Paiute Indians has been a sovereign Indian tribe since time immemorial. The Band was first officially recognized by the United States in 1929 when the United States Congress provided for the acknowledgement and support of the Kanosh Band by reserving 920 acres of public domain land "for the sole use and occupancy of the Kanosh Band of Indians in Utah." Act of February 11, 1929. 45 Stat. 1161.

19. The United States reaffirmed the sovereignty and government-to-government relationship with the Kanosh Band five years later when it reserved additional public lands for "the

sole use and occupancy of the Kanosh band of Indians of Utah.” Act of June 20, 1935, 49 Stat. 393.

20. Pursuant to its status as a federally recognized Indian tribe eligible to receive federal benefits and services, the Band voted to accept the IRA, and on December 2, 1942, the Secretary of the Interior approved the *Constitution and By-laws of the Kanosh Band of Paiute Indians of the Kanosh Indian Community*, which officially organized the Band under the IRA.

21. In 1942, the Kanosh Band of Paiutes was an independent, federally recognized Tribe.

### **III. Termination of Federal Supervision over Various Bands of Paiute Indians**

22. In 1954, the United States terminated federal supervision over the Shivwits and Kanosh Bands as well as other Bands of Southern Paiutes residing in modern-day Utah. Act of September 1, 1954, 68 Stat. 1099 (hereinafter “Paiute Termination Act”).

23. In the Paiute Termination Act, Congress expressly intended “to provide for the termination of Federal supervision over the property of certain tribes, bands, and colonies of Indians.” In doing so, Congress grouped several individually recognized and distinct Indian tribes together in a single piece of legislation.

24. The plain language of the Paiute Termination Act recognizes and denotes the separate sovereignty and governmental status of these tribes. *See*, 68 Stat. 1100 (“Tribe means

any of the following tribes or bands of Indians...”; “Each tribe shall have....”; “If a tribe fails to submit....”).

25. The Paiute Termination Act did not terminate the Bands as entities, but instead only terminated the specified federal relationship with each Band.

26. After the United States terminated the sovereign-to-sovereign relationship with the Bands, the Bands continued to perform self-governing functions through elected representatives and meetings of the Bands’ general membership.

#### **IV. Paiute Restoration Act**

27. On April 3, 1980, Congress passed the Paiute Indian Tribe of Utah Restoration Act, P.L. 96-227, 94 Stat. 317 (hereinafter “Paiute Restoration Act”), which separately “restored” the federal trust relationship and eligibility for federal benefits to each of the Southern Paiute bands that were terminated by the Paiute Termination Act, including the Shivwits and Kanosh Bands. Paiute Restoration Act, Section 3(a) (“The Federal trust relationship is *restored to the Shivwits, Kanosh, Koosharem, and Indian Peaks Bands of Paiute Indians of Utah...*” (emphasis added)).

28. When Congress passed the Paiute Restoration Act, Congress considered, as one option, creating a new, single, federally recognized tribe composed of the five previously separate bands, but purposefully rejected that option. *See, House Report No. 96-712, 96th Cong., 1st Sess. (December 18, 1979)* (Removing: “Federal recognition is hereby extended to the tribe, and” and insert in lieu thereof: “The Federal trust relationship is restored to the Shivwits, Kanosh, Koosharem, and Indian Peaks Bands...”).

29. Instead, Congress restored each of the Southern Paiute Bands, including the Shivwits Band and the Kanosh Band, as separate sovereigns, which is the status they had at the

time of termination. H.R. 4996, 126 Cong. Rec. H 1206-09 (daily ed. Feb. 25, 1980) (establishing the intent of the Act was to “insure that what is *restored*...under the bill is the same as what was diminished or lost under the 1954 Act” and to “*restore* all the rights and privileges that were lost in 1954...”) (emphasis added).

30. To oversee the implementation of the Paiute Restoration Act, Section 5 called for members of the Bands to elect a six-member Interim Tribal Council that would serve as a transitional body charged with developing a proposed constitution for a cooperative multi-band government, which was to be voted on “pursuant to the provisions of Section 16 of the [IRA].” 94 Stat. 319-320.

31. By giving the Interim Tribal Council no powers “other than those given to it in accordance with this Act,” Congress made clear through the plain language of the Act that the Interim Tribal Council, as transitional governing body of the PITU, was not a federally recognized tribe, but strictly a creature of statute with limited powers, lasting only six months. 94 Stat. 319.

32. The multi-Band entity later adopted an inter-tribal constitution and became known as the Paiute Indian Tribe of Utah, or PITU.

33. PITU did not exist prior to the Paiute Termination Act, and PITU was therefore not restored under the Paiute Restoration Act.

34. PITU as presently constituted did not exist prior to the adoption of the Constitution of the Paiute Indian Tribe of Utah by the five constituent Bands in 1981.

35. PITU did not enjoy the privileges and powers of the Bands’ federal recognition unless and until the individual Bands whose sovereignty had been “restored” by the Act voted to adopt a constitution establishing a cooperative multi-Band government.

36. Congress required that the proposed constitution be voted on pursuant to the provisions of the IRA. Under those provisions, each individual Band whose sovereignty was “restored” under the Act was individually required to vote on whether or not to join the cooperative multi-Band government. 25 U.S.C. § 5129 (defining “tribe” as used in the IRA as “any Indian tribe, organized band, pueblo, or the Indians *residing on one reservation.*” (emphasis added)); 25 U.S.C. § 5128 (providing that Indians on a particular reservation “may vote to exclude itself from the application of the [IRA],... *as to such reservation.*” (emphasis added)).

**V. *Ultra Vires* Actions of Defendant**

**A. Actions outside the scope of authority prohibiting Plaintiff Bands from participating in the PITU Government**

37. The original PITU Constitution was purportedly duly adopted under the IRA on October 1, 1981 and received Secretarial approval on October 8, 1981. As contemplated by Congress, it established a truly cooperative and representative multi-Band government with a five member PITU Council, made up of one representative from each of the constituent Bands as elected by that Band’s membership.

38. On June 11, 1991, an amended PITU Constitution was purportedly adopted under the IRA that fundamentally changed the structure of the multi-Band government, including the introduction of a sixth member of the PITU Council to serve in the role of a chairperson, thereby providing one of the five constituent Bands an unequal representation on the PITU Council.

39. Since the Department of Interior’s approval of the amended PITU Constitution in 1991, the PITU Council has been continually embroiled in dysfunctional disputes resulting from the imbalance of representation inherent with one Band having two seats on the PITU Council while the other Bands retain only one seat.

40. Defendant has furthered this unbalanced authority through her *ultra vires* actions prohibiting Plaintiffs, two of the five constituent Bands representing approximately fifty (50) percent of PITU's membership, from participating in PITU's governing body.

41. Because Defendant is the PITU Chair, her Band has a second member on the PITU Council. That second member is Defendant's mother.

42. Defendant asserts that her actions excluding the Plaintiff Bands' members from the PITU Council results in three PITU Council members constituting a quorum, of which only two would then be needed to approve PITU action.

43. By excluding representatives from two Bands, Defendant and her own mother have sufficient votes to approve action for PITU, while the Plaintiff Bands have no say at all on PITU Council matters.

44. Defendant's *ultra vires* actions to exclude two of the five constituent Bands are contrary to both the Paiute Restoration Act and the original and amended PITU Constitutions, which all recognize each constituent Band's independent sovereignty from which the newly formed PITU is delegated only limited sovereignty and governmental powers.

45. Defendant's *ultra vires* actions to exclude two of the five constituent Bands are contrary to, and deprive the Plaintiff Bands of, the Plaintiff Bands' rights as sovereign governments; and Defendant's actions disenfranchise all members of the Plaintiff Bands for all matters which the Bands delegated to the PITU.

46. Article IV, Section 1 (a) of the PITU Constitution states that the PITU Council shall consist of members "elected from and by each constituent band at a band election." Article VIII, Section 2(g) provides that Band Councils have the exclusive power "to elect and recall its

representative to the tribal council...” while Section 2(k) finds that the election and recall of representatives is the only enumerated power that Band Councils cannot delegate to the PITU Council.

47. Defendant’s *ultra vires* actions prohibiting two of the five constituent Bands from participating in tribal governance were not authorized by the PITU Council and were not taken pursuant to powers delegated to Defendant by PITU.

48. The powers of the PITU Council are limited by the express prohibition of unilateral action found in Article X, Section 2 of the Constitution which states the PITU Council can take action only by ordinance, resolution or motion, with “every act of the council which is of a temporary nature or relating to a specific action shall be made by resolution.” Constitution, Article X, Section 2(a), (c). Similarly, Article IX, Section 1(f) of the Constitution establishes that the Tribal Chairperson is prohibited from obligating the PITU in any manner without prior written authorization of the PITU Council.

49. Article VIII acknowledges the cooperative nature of the multi-band government by requiring that that each Band “shall establish by the adoption of by-laws its own rules of procedure and organizational structure.” Constitution, Article VIII, Section 1.

50. Article VIII goes on to broadly set forth the powers of Band Councils and provides that “the powers of the bands as set forth [in the Constitution] shall limit the powers of the tribal council and the tribal council shall pass no ordinances nor adopt any resolutions infringing on the powers of the bands set forth herein.” Constitution, Article VIII, Section 2.

51. In addition to the limitations placed on the PITU Council by virtue of the Bands' inherent individual sovereignty restored by the Paiute Restoration Act, the Constitution also places limitations on the PITU Council's powers through the creation of a Judicial Branch in Article VI.

52. Article VI states that "all judicial powers of the tribe shall be vested in a tribal judiciary, which "shall consist of a tribal court of general jurisdiction and an appellate court." Constitution, Article VI, Section 3.

53. To this day, the PITU has failed to establish a functioning tribal or appellate court as set forth in Article VI in which aggrieved parties can submit suits in law or equity arising under the PITU Constitution or Tribal law.

54. Upon information and belief, sometime in mid-2019 Defendant began instructing tribal employees to obstruct and prevent the Plaintiff Bands' elected representatives from participating in PITU Council proceedings.

55. Upon information and belief, sometime in mid-2019 Defendant placed a gag-order on employees of PITU preventing any information sharing with the Shivwits Band.

56. On July 26, 2019, the Shivwits Band sent correspondence to the PITU Council asserting its right to participate in Tribal Council proceedings. The Band never received a response from the PITU Council.

57. To this day, the elected representatives of Plaintiff Bands are prohibited from attending meetings of the PITU Council as Band representatives or placing issues concerning their membership on the PITU Council's agenda.

**B. Actions outside the scope of authority to interfere in Band Elections**

58. The Bands have the power under the PITU Constitution and their Band Bylaws to conduct elections for Band Officers. Under the PITU Constitution, the officers elected in those Band elections are the Band representatives on the multi-band PITU Council.

59. Prior to Defendant becoming PITU Chair, the PITU did not interfere in Band elections.

60. Defendant has no authority to interfere in Band elections, to determine the process for Band elections, or to conduct Band Elections; and has no authority to exclude any Band's duly elected Chair from the PITU Council.

61. Defendant has repeatedly taken *ultra vires* actions which interfere in Band elections and additional *ultra vires* actions to exclude the Bands' elected representatives from PITU Council actions.

62. On January 9, 2019, the Shivwits Band Council received notice from Patrick Charles of resignation from his position as Chairman of the Shivwits Band Council. That same day, the Band Council met to consider the Chairman's resignation and, pursuant to its authority under the PITU Constitution and Shivwits Band Bylaws, enacted Resolution 2019-04 which accepted the resignation, appointed Vice-Chairperson Carmen Clark as Acting Chairperson of the Band and representative on the PITU Council, and scheduled a Band Meeting pursuant to the Band's Bylaws to vote on how to permanently fill the vacancy.

63. On January 10, 2019, the Shivwits Band received correspondence from Defendant regarding resignation of the Shivwits Band Chairman which stated that the Shivwits Band "must give written notification...of how [the Band] will hold the Special Election to fill the vacant Tribal

Council Seat.” The correspondence went on to state that the special election would be governed by a “Special Election Board” which was appointed by and operated under the authority of PITU.

64. On information and belief, the Defendant’s actions described in the preceding paragraph were not approved or authorized by resolution of the PITU Council.

65. Further, the PITU Council lacked power to authorize Defendant or anyone else to issue that correspondence. Whether done with or without PITU Council resolution or approval, the correspondence was an *ultra vires* act of the Defendant.

66. On January 11, 2019, the Shivwits Band transmitted correspondence to Defendant discussing the actions the Band Council had taken to fill the vacancy and the Constitutional basis upon which they were taken. The correspondence noted the lack of PITU Council action, as required by the Constitution, to support Defendant’s January 10, 2019 correspondence and requested the PITU Council refrain from obstructing the internal governance of the Band.

67. On January 14, 2019, the Shivwits Band sent additional correspondence to Defendant in care of PITU’s legal counsel. The Band’s correspondence set forth the same concerns as the Band’s January 11, 2019 correspondence, while also demanding a Tribal judicial forum as contemplated by Article VI of the PITU Constitution where the Band’s objections to Defendant’s interference could be raised.

68. On January 15, 2019, Defendant informed the Shivwits Band’s Acting Chairwoman Carmen Clark that she would not be able to sit or vote on the PITU Council and that Band Council members could not talk about matters discussed at PITU Council meetings with their respective Band Councils.

69. Upon information and belief, there was no formal PITU Council action authorizing Defendant's statement or conduct.

70. Regardless of whether there was PITU Council action, Defendant's action was *ultra vires*.

71. On January 31, 2019, a duly called and noticed meeting of the Shivwits Band membership was held regarding the vacancy left by Chairman Patrick Charles' resignation.

72. At that meeting, the membership voted to appoint Phillip Bushhead as Shivwits Band Chairperson. The results of the Band Meeting and vote were memorialized in Shivwits Band Resolution 2019-05, which was transmitted to the PITU by correspondence sent on January 23, 2019.

73. Despite Defendant's contention that PITU, not the Bands, must oversee elections of the Band Councils, on April 1, 2019, the PITU Council duly passed Resolution 2019-25 which ratified Phillip Bushhead as Shivwits Band Chairperson as voted on by the Shivwits Band membership and set forth in Shivwits Band Resolution 2019-05.

74. After PITU rejected Defendant's position, Defendant refused to abide by or recognize Resolution 2019-25.

75. On May 17, 2019, the Shivwits Band sent correspondence to PITU's Tribal Enrollment Supervisor requesting a complete list of the Shivwits Band membership including names, addresses, and dates of birth.

76. Sometime thereafter, the Shivwits Band received a list of names, but addresses and dates of birth were not included.

77. On June 1, 2019, the Shivwits Band, through legal counsel, sent correspondence requesting either an expected date when the Band would receive the requested information or an official notice that the PITU Council was actively refusing to provide the requested information regarding the Band's membership. The Band never received a response from PITU Council.

78. On June 18, 2019, Shivwits Band Chairman Phillip Bushhead submitted his written resignation to the Shivwits Band Council.

79. On June 19, 2019, the Shivwits Band Council met to consider the Chairman's resignation and, pursuant to its authority under the PITU Constitution and Shivwits Band Bylaws, enacted Resolution 2019-10 which accepted the resignation, appointed Vice-Chairperson Carmen Clark as Acting Chairperson of the Band and representative on the PITU Council, and scheduled a Band Meeting to vote on how to permanently fill the vacancy.

80. On July 5, 2019, the Shivwits Band of Paiutes sent correspondence to the PITU Council reiterating its request for a legitimate Tribal Court pursuant to the PITU Constitution in which it could properly raise objections to the PITU's illegal interference in Band elections and affairs. The Band never received a response from PITU Council.

81. On or about July 14, 2019, a notice to Shivwits Band voters was issued from PITU which purported to schedule a "Nomination Meeting for Shivwits Band Chairperson" on July 18, 2019 and an election for the Shivwits Band Chairperson on August 7, 2019.

82. Upon information and belief, Defendant approved the aforementioned notice without authorization by formal action of the PITU Council.

83. On July 18, 2019, a Shivwits Band meeting, duly noticed and conducted by the Shivwits Band Council pursuant to Shivwits Band Bylaws, was held to facilitate a vote of the Band

Membership on how to fill the vacancy left by the resignation of Chairman Phillip Bushhead. The vote of the majority of the members present resulted in the appointment of Carmen Clark as Chairperson and Tina Gonzales as Vice-Chairperson of the Band.

84. On July 26, 2019, the Shivwits Band sent correspondence to the PITU Council containing notification of the vote of the Band membership on July 18, 2019 and indicating that Shivwits Vice-Chairperson Tina Gonzales was appointed by the Shivwits Band Council to represent the Band on the PITU Council. The Band never received a response from PITU Council.

85. Shivwits Band Vice-Chairperson Tina Gonzales traveled to Cedar City for PITU Council meetings in the intervening months and has been told by Defendant she could not sit on the PITU Council because she was not elected in an election overseen and administered by PITU.

86. In mid to late July 2019, the Kanosh Band received correspondence from Defendant demanding the Band immediately notify the Tribal Council when it would hold an election overseen and administered by PITU.

87. On June 24, 2019, the Kanosh Band sent correspondence to the PITU Council objecting to its interference with the Band's elections, notifying the PITU of the Kanosh Band Council's appointment of councilmember Darlene Arrum as the Band's interim representative to the PITU Council, and inviting the PITU Council to meet with the Kanosh and other constituent Band councils to discuss a solution to the ongoing interference with Band elections. The Band never received a response from the PITU Council.

88. Kanosh Band Councilmember Darlene Arrum traveled to Cedar City for PITU Council meetings in the intervening months and has been told by Defendant she could not sit on

the PITU Council because she was not elected in an election overseen and administered by the PITU.

89. On November 19, 2019, the Shivwits Band sent correspondence to the PITU Council reiterating their May 17, 2019, request for a list of the Shivwits Band membership names and addresses, this time in order to facilitate yearly Christmas checks to Band members. The correspondence also contained assurances that the Band Council and Shivwits Band Corporation had implemented security measures to ensure the confidentiality of the requested information.

90. On or about December 7, 2019, the Shivwits Band received correspondence from Defendant formally denying the Band's request for the names and addresses of Band membership. The correspondence stated the request would only be approved once the Band held an election for the Shivwits Band Council that was controlled and administered by PITU.

91. Upon information and belief, there was no PITU Council Resolution authorizing Defendant's statement or conduct.

92. Regardless of whether there was PITU Council action, Defendant's action was *ultra vires*.

93. Defendant's actions have not only attempted to dictate how the constituent Bands choose their elected officials, but what issues those elected officials are able to present for consideration before PITU's governing body.

94. Defendant's actions and directions are directly responsible for the obstruction of Plaintiff Bands' Council members' participation in the PITU Council and the deprivation of the Plaintiff Bands' memberships' ability to exercise their inalienable right to participate in the political process by which they are governed.

**C. Actions outside the scope of authority in the use of PITU legal counsel**

95. In early 2019, the PITU Council became concerned that Defendant was directing PITU's legal counsel to take actions that had not been approved by PITU; and that even though they lacked approval from the full PITU Council, legal counsel was then taking instructions and performing actions requested by Defendant.

96. The PITU Council was also concerned that legal counsel that was supposed to be answering to the PITU Council was not providing information about its services to all PITU Council members, but was instead only providing information to Defendant.

97. The PITU Council was also concerned that legal counsel was billing for and receiving PITU funds for costly services that the PITU Council had never approved.

98. The PITU Council took multiple actions to clarify the applicable law regarding use of legal counsel and the duties of legal counsel to provide information to all PITU members.

99. At a meeting of the PITU Council on February 11, 2019, a motion was passed which approved the creation of a PITU policy dictating when and how members of the PITU Council could interact and contact with the PITU's legal counsel.

100. On March 11, 2019, the PITU Council passed a Resolution titled "Amendment of Legal Counsel Engagement and Directive Process" which was developed pursuant to the Council's vote on February 11, 2019, and limited the ability of any single member of the Council from contacting or directing the PITU's legal counsel without PITU Council approval.

101. On April 1, 2019, the PITU Council passed Resolution 2019-19, which mirrored the "Amendment of Legal Counsel Engagement and Directive Process" passed on March 11, 2019, with minor changes and established that any request for legal services must be approved in advance

by written resolution of the PITU Council and all members of the PITU Council were to receive copies of any individual PITU Council member's correspondence with legal counsel.

102. Upon information and belief, Defendant refused to comply with all of the above PITU Council laws; and upon information and belief, she made legal counsel aware of the above laws but directed that legal counsel take actions which were contrary to those laws, and then Defendant has provided tribal funds to legal counsel for services that were performed in violation of the above Council-approved laws.

103. Defendant's violation of the PITU laws described above, including actions which she personally took and actions by legal counsel who were performing services without approval by the full PITU Council as described above, are *ultra vires* actions.

104. Defendants' use of PITU funds to pay for services that had not been approved by PITU under the above laws was an action taken outside the scope of her authority.

105. Upon information and belief, on or about May 1, 2019, Defendant, with apparent assistance from one or more attorneys whose services had not been authorized by the PITU Council in accordance with Resolution 2019-19, developed and purported to pass a resolution that rescinded Resolution 2019-19.

106. Defendant's actions on May 1, 2019 were done outside the scope of her authority, and any legal services she purported to authorize related thereto were outside the scope of her authority, as were any payments to any attorneys for any such services, because the services had not been approved by the PITU Council under the laws described above.

107. Due to concerns over the lack of notice and discussion prior to the executive session PITU Council meeting where Resolution 2019-19 was introduced, on May 26, 2019, the

Chairperson of the Cedar Band of Paiutes rescinded her vote supporting Defendant's attempt to rescind Resolution 2019-19 via hand-delivered written correspondence.

108. Upon information and belief, Defendant has disregarded the Cedar Band's withdraw of its vote supporting Defendant's attempt to rescind Resolution 2019-19.

**D. Actions outside the scope of authority to prevent PITU Council from considering Plaintiff Bands' issues and prevent Plaintiff Bands from obtaining information regarding PITU actions**

109. The Plaintiff Bands have a right to notice of all PITU Council meetings, and a right to receive all PITU Council minutes, resolutions, and other written actions.

110. Prior to Defendant becoming Chair, PITU had a process in place which resulted in Plaintiff Bands receiving that information.

111. Plaintiff Bands now do not receive most of these documents regarding the PITU Council's actions.

112. Upon information and belief, including belief that PITU administrative employees would continue to comply with the prior process unless directed not to, Defendant has taken action outside the scope of her authority to stop Plaintiff Bands from being sent notices and copies of PITU Council meetings and actions.

113. As constituent Bands of PITU, the Plaintiff Bands have the right to have concerns or grievances placed onto the PITU Council's Agenda. Defendant is acting outside the scope of her authority by barring the PITU Council's consideration of Plaintiff Bands' concerns.

114. On February 20, 2019, the Shivwits Band submitted correspondence to the PITU Council and Defendant objecting to the proposed sale of Tribal lands and requesting to place the proposed sale of land on the agenda of the next PITU Council meeting. The Band never received

a response from the PITU Council, and upon information and belief, the Band's concern was not placed on the agenda.

115. On March 7, 2019, the Kanosh Band, through legal counsel, requested to be placed on the agenda for an upcoming PITU Council meeting. The Band never received a response, and the Kanosh Band was not placed on the agenda.

116. In correspondence dated March 19, 2019, the Kanosh and Shivwits Bands requested the PITU Council and Defendant provide information on a number of issues, including matters addressed to the PITU Council on three separate occasions since January of 2019.

117. By correspondence to PITU's legal counsel dated March 26, 2019, the Kanosh and Shivwits Bands requested a Tribal court forum, pursuant to the PITU Constitution, to raise objections to the interference with Band elections and governance and the exclusion of Band councilmembers and issues from PITU Council meetings.

118. The March 26, 2019 correspondence also requested nine discrete issues be placed on the agenda for a PITU Council meeting on April 1, 2019, only two of which were added.

119. Through legal counsel, the Shivwits Band requested placement on the PITU Council agenda on July 15, 2019. The Band never received a response from PITU Council.

120. On July 16, 2019, the Shivwits Band Council sent correspondence to the PITU Council wherein the Band objected to the PITU's continued interference in the Band's affairs, highlighted its repeated requests for a Tribal Court to raise its objections to the PITU's attempts at interference in its election process and exclusion from the PITU Council, and requested formal consultation with the PITU Council pursuant to PITU's Election Ordinance. The Band never received a response from PITU Council.

121. Through legal counsel, the Shivwits Band requested placement on the PITU Council agenda on July 25, 2019. The Band never received a response from PITU Council, and it was not placed on the agenda.

122. On or about September 30, 2019, while having their elected representatives actively obstructed from participating on the PITU Council, the Shivwits Band received correspondence signed by Defendant which notified the Band that the PITU Council had decided to relocate the health clinic on the Shivwits Band Reservation to a new location off-reservation.

123. At no time was the Shivwits Band or its members consulted with or made aware of PITU's plans to relocate the Band's health clinic off of the Shivwits Band Reservation.

124. On October 7, 2019, the Shivwits Band Council obtained additional information regarding the dismantling of the health clinic on the Shivwits Band Reservation through an email Defendant sent to the clinic's staff, which announced a grand opening for the new off-reservation clinic scheduled for October 28, 2019.

125. On October 16, 2019, the Shivwits Band Council became aware that PITU had begun the process of dismantling the Shivwits Reservation Health Clinic and removing equipment, supplies, and other resources that provided vital health services to Shivwits Band members on the Shivwits Reservation.

126. On October 21, 2019, the Shivwits Band Council sent correspondence to Defendant which notified her of the Band's objection to the proposed dismantling of the Band's health clinic, and requested consultation before further action. The Band never received a response from PITU Council or any Tribal Council resolution or action approving the dismantling and relocation of the Band's health clinic without the Band's consent.

127. Defendant orchestrated the closure of Shivwits on-Reservation health clinic without Shivwits Band consultation, as was conducted with the Koosharem Band when its clinic was relocated off-Reservation to Richfield, Utah; without full approval by PITU Council Resolution,; and without the knowledge or approval of the Indian Health Service.

128. Defendant's actions have seriously jeopardized the health, safety, and welfare of the Shivwits Band's members by disconnecting them from federal programs and services contrary to Congress' mandate, and disrupted the continuous administration of health care services on the Shivwits Reservation.

129. The Shivwits Band has recently become aware that it has been removed from among the names of PITU's constituent bands on various tribal documents.

130. Upon information and belief, Defendant engaged in an *ultra vires* action by causing the removal of the Shivwits Band's name on tribal documents without approval of the full PITU Council.

**E. Actions outside the scope of authority in the retaliatory purported removal of Shivwits and Kanosh Band Council Members from the PITU Council.**

131. At a regular meeting on March 11, 2019, the PITU Council passed two separate Resolutions, both with three in favor and one against, which collectively accepted a Complaint against Defendant signed by Kanosh Band Chairperson Corrina Bow and a "Notice of Charges and Hearing" under Article XII of the PITU Constitution which was signed by the Kanosh Band Vice-Chairman DelVern Pikyavit; Vice-Chairperson of the Shivwits Band Carmen Clark; and the Chairperson of the Cedar Band of Paiute Indians. Three of the five Bands supported the Complaint against Defendant and formally voted to initiate an investigation of Defendant's conduct.

132. Both the Complaint and Notice outlined the specific charges of misconduct against Defendant, while the Notice also set forth the rights of Defendant under Article XIII of the PITU Constitution, including the right to examine witnesses and to elect either an open or a closed hearing.

133. At a regular meeting on April 1, 2019, the PITU Council passed Resolution 2019-21 by a vote of three in favor and two against, which formally recognized the Complaint and investigation into Defendant and amended the language governing the investigation into Defendant to allow for an outside investigator and discovery, as was the past practice of the PITU.

134. The PITU Council also considered Resolution 2019-22, which would have set a removal hearing for Defendant under PITU Constitution Article XII, Section 2, but voted to table Resolution 2019-22 in order to provide adequate investigation into Defendant's conduct in order to comply with past practice of the PITU and protect Defendant's due process rights.

135. Upon information and belief, Defendant directed PITU tribal employees that Resolution 2019-21 should not be implemented or formally issued in violation of her constitutional duty to obey the laws of the PITU and Plaintiffs' right to a legitimate PITU Council.

136. Upon information and belief, sometime during late April or early May, 2019, Defendant held a closed-door meeting in the PITU Council at which Defendant proposed a resolution, which would rescind Resolution 2019-21 recognizing the complaint against Defendant and authorizing an investigation. The Plaintiffs Bands did not receive formal notice of this meeting and were not allowed to participate in the meeting.

137. Because Resolution 2019-21 related to an investigation of Defendant, and because there was a complaint pending against her, she had no authority to introduce any resolution, participate in any meeting, or be part of the quorum for any meeting, related to that Resolution.

138. Plaintiffs requested, but did not receive a copy of any PITU Council resolution or action related to the purported rescission of Resolution 2019-21.

139. Upon information and belief, at the same closed-door meeting, Defendant introduced three complaints authored by Defendant alleging violations of the PITU's "Tribal Council Standards of Conduct" ordinance against Kanosh Band Chairperson Corrina Bow, Kanosh Band Vice-Chairperson DelVern Pikyavit, and Shivwits Band Vice-Chairperson Carmen Clark.

140. All three of these elected band councilmembers were signatories to either the March 11, 2019 Complaint against Defendant or the March 11, 2019 Notice of Complaint and Investigation that accepted the complaint and initiated an investigation into Defendant's conduct.

141. Defendant's own retaliatory complaints against Plaintiffs' councilmembers were purportedly accepted by "resolutions" signed by Defendant. In that document signed by the Defendant, Defendant purported to waive any investigation of her allegations, and she purported to schedule a hearing under the "Tribal Council Standards of Conduct" ordinance without identifying the complainant, signing the complaint, presenting a witness list, or allowing for discovery.

142. Upon information and belief, Defendant authored the complaints and orchestrated the removal hearings for political retribution by targeting Plaintiffs' councilmembers who had introduced and voted in favor of accepting a complaint and initiating an investigation into allegations made against Defendant.

143. Defendants' actions, and any actions by anyone purporting to act on behalf of the PITU, related to the above, were done outside the scope of any authority which could be granted or which was granted by the PITU.

144. On or about May 15, 2019, Kanosh Band Chairperson Corrina Bow, Kanosh Band Vice-Chairperson DelVern Pikyavit, and Shivwits Band Vice-Chairperson Carmen Clark received notice from Defendant that a hearing had been scheduled for July 11, 2019, and that the hearing would be conducted as a constitutional removal hearing rather than a sanctions hearing under the PITU's "Tribal Council Standards of Conduct Ordinance."

145. On May 26, 2019, the Cedar Band Chairwoman rescinded one of the two PITU Council votes supporting Defendant's retaliatory complaints in accordance with past practice of the PITU Council due to concerns over the lack of notice and discussion prior to the closed-door executive session PITU Council meeting where they were introduced.

146. By *ultra vires*, unilateral act Defendant concluded that Cedar Band Chairwoman Tom's written decision to rescind her vote would be disregarded by the PITU Council.

147. Upon information and belief, during the period prior to July 11, 2019, Defendant hand-selected a hearing officer to preside over the removal hearings and caused the drafting of "Supplementary Rules of Procedure" to govern hearings, which provided said hearing officer broad authority to rule on matters of pleadings, practice, procedure, and evidence.

148. On June 3, 2019, Plaintiffs were notified that, despite the fact that both the complaints and Plaintiffs' councilmembers requested open hearings as guaranteed under the PITU Constitution, the PITU Council had unilaterally decided to conduct closed hearings.

149. Plaintiffs requested, but did not receive a copy of any PITU Council action that authorized or approved the “Supplementary Rules of Procedure” or the decision to deny their councilmembers the right to an open hearing. Defendant’s action to deny Plaintiffs’ councilmembers an open hearing was an *ultra vires* act.

150. On June 10, 2019, Plaintiffs’ councilmembers submitted twenty-three objections to the procedure and forum related to the acceptance of the complaints and scheduling of the removal hearings, which requested additional time to investigate the matters in order to protect the councilmembers’ due process rights.

151. That same day, Plaintiffs’ councilmembers submitted correspondence to PITU Council stating they would not be attending the hearings based on the objections raised and the request for additional time to develop a defense.

152. Plaintiffs’ councilmembers had also received written notice that the Cedar Band objected to the hearings in writing and that Cedar Band’s member of the PITU Council would not be attending the hearing. In light of that information and the fact that Shivwits and Kanosh members were not allowed to participate in the hearing, Plaintiffs’ councilmembers were aware that a quorum could not and would not exist for the June 11, 2019 hearing.

153. On June 11, 2019, Defendant signed three “resolutions” which purportedly determined that there was sufficient evidence to remove Plaintiffs’ councilmembers from the PITU Council, with five of the twenty charges brought purportedly approved by two votes, and the remaining fifteen charges purportedly approved by one or zero votes.

154. Plaintiffs requested, but did not receive a copy of any PITU Council minutes from the removal hearings documenting the process, testimony, or evidence presented in the hearings.

155. Upon information and belief, including the fact that the PITU has not provided records from that day, the only PITU Council members present for any quorum call were Defendant, one of her relatives from her own Band, and one member of another Band, and therefore there was no quorum, and no PITU Council action could have lawfully been taken that day.

156. Additionally, because the PITU Council representatives from the Shivwits Band, Kanosh Band, and Cedar Band, collectively representing more than eighty one (81) percent of the PITU's membership, objected to and did not participate in the removal hearings, and due to Defendant's inherent conflict of interest as the complainant, there was no lawful quorum to conduct the removal hearings.

157. Defendant's actions to conduct and participate in the hearings regardless of these facts constitute *ultra vires* acts.

158. The procedural posture of the rushed, no-investigation, no-discovery, closed-forum, trial by ambush prejudiced the Bands and their elected councilmembers' due process rights.

159. As the complaining party and main witness, Defendant had a direct conflict of interest and should not have been involved to any degree in hiring a hearing officer, developing hearing procedures, developing forms, or establishing hearing dates.

160. On June 18, 2019, Defendant signed a document that purportedly established a temporary "Tribal Appellate Court," limited the jurisdiction of the court to the review of constitutional issues arising from the removal of Plaintiffs' councilmembers, and provided Defendant the authority to negotiate and execute contracts with individual appellate court judges.

161. Upon information and belief, notwithstanding her direct conflict of interest, Defendant directed affairs for the removal hearing in order to orchestrate political retribution against Plaintiffs' duly elected Council members.

162. Through these unconstitutional removal proceedings, Defendant has imposed a new form of government on PITU which deprives Plaintiffs and their members, representing approximately fifty (50) percent of the PITU's membership, of the right to participate in the cooperative multi-band government envisioned in the Paiute Restoration Act and approved by Bands through a vote under the Indian Reorganization Act, whereby each Band, as separate sovereigns, is given a voice in Tribal governance through the election of Band representatives that sit on the PITU Council.

163. In voting to adopt the PITU Constitution, Plaintiffs chose to participate in a cooperative multi-Band government as set forth by the Paiute Restoration Act. Neither they, nor Congress, consented to a government in which the votes of constituent Bands' members would be disregarded through the politically motivated exclusion of their duly elected representatives resulting in a complete lack of representation of over one half of PITU's membership.

### **CAUSE OF ACTION**

#### **Violation of United States Constitution and Federal Law**

164. Plaintiffs repeat and reallege the allegations set forth above as if set forth fully herein.

165. Pursuant to *Ex Parte Young*, a federal court can enjoin tribal officers from acting unconstitutionally, either because their action violates the U.S. Constitution directly or because the tribal official's actions are contrary to federal law, which is the supreme law of the land.

166. Defendant has independently implemented and/or enforced actions and policies denying Plaintiffs the right to participate in the PITU's governance which violate, without limitation, Plaintiffs rights and privileges which are guaranteed to them under the United States Constitution, the Paiute Restoration Act, and the Indian Reorganization Act.

167. Defendant's actions are ongoing and represent a gross deprivation of Plaintiffs' constitutional and statutory rights.

168. By reason of the foregoing, a ripe and justiciable controversy exists, and the Plaintiffs have standing to assert their rights.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Shivwits and Kanosh Bands of Paiute Indians requests for judgement granting declaratory and injunctive relief as follows:

1. Declaring that the actions of Defendant alleged above are outside the scope of her authority;
2. Declaring that Defendant's actions sending notices of election for Bands that she is not a member of were done outside the scope of her authority;
3. Declaring that Defendant's actions interfering in the election of Plaintiff Bands was done outside the scope of her authority;
4. Declaration that Defendant, through her own actions and through those of her attorneys, of refusing to comply and directing attorneys to refuse to comply with the Tribal laws governing assignment of work to attorneys, payment, and reporting requirements was actions outside the scope of her authority;

5. Preliminarily and permanently enjoining Defendant and all those working in concert with her from using PITU funds to pay for work of attorneys which has not been approved by PITU, with participation from Plaintiff Bands as required law;

6. Ordering Defendant to provide notice to Plaintiff Bands of all PITU Council meetings, and enjoining Defendant from barring Plaintiff Bands' representatives from attending all such meetings during any time that Defendant is, or claims to be, on the PITU Council;

7. Ordering Defendant, and all those working in concert with her, to provide Plaintiff Bands will all Tribal minutes, ordinances, resolutions, statutes, financial records, investigative reports, and documents regarding all attorney and other professional services from the date that Plaintiff Bands have been wrongly excluded from receiving documents through a date to be determined by final order of this Court;

8. Enjoining Defendant and those acting in concert with her from sending notice of election of Plaintiff Bands' officers, from supervising any such elections, or from refusing to accept the results of any such elections;

9. Enjoining Defendant and those acting in concert with her from thwarting the investigation into Defendant's conduct approved by Resolution 2019-21;

10. Enjoining Defendant and those acting in concert with her from interfering in the Shivwits Band's ability to be involved in and control the relocated health clinic in St. George, Utah, and ordering Defendant and those acting in concert with her to immediately allow the Shivwits Band Council to participate in and control the operation of the relocated health clinic in St. George, Utah to the same degree as the Koosharem Band participates in and controls the operation of the health clinic in Richfield, Utah; and

11. Such other and further relief as the Court shall deem appropriate.

Respectfully submitted this 14th day of February, 2020.

**ECHO HAWK & OLSEN, PLLC**

*/s/ Mark Echo Hawk*

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