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LOWER BRULE SIOUX TRIBAL COURT) IN TRIBAL COURT
 LOWER BRULE SIOUX RESERVATION) CIVIL DIVISION
 LOWER BRULE SIOUX JURISDICTION) CV-#16-05-~~002~~ *0048 MJ*

Vance Jandreau)
 Petitioner) The listed respondent, Kevin Wright
) in this action of Lower Brule Tribal
) Court case CV-#16-05-002,

vs.)

Kevin Wright) hereby files to the Lower Brule Special
 Vice Chairman) Tribal Judge his motion for dismissal
) with prejudice of petitioner, Vance
) Jandreau's instant case or action of
) CV-#16-05-~~002~~ *0048* consisting of an
) extraordinary Writ of Mandamus.

Comes Now, listed Respondent Kevin Wright files his motion for dismissal with prejudice to petitioner Vance Jandreau's Instant action of a Writ of Mandamus (to enforce a recall petition) based upon the fact that this exhibit (petition for recall) was not served upon respondent where in Vance Jandreau is listed as the petitioner and stamped as a tribal court document (recall petition). The respondent's motion for dismissal with prejudice is also based upon the following argument that the petitioner had failed to state a valid claim upon which relief can be granted.

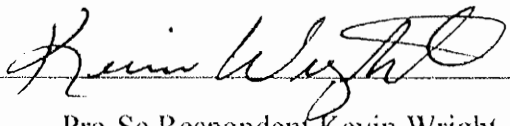
RESPONDENT KEVIN WRIGHT'S MOTION OR DISMISSAL

The Respondent Kevin Wright on the date of May 19, 2016 now files (along with his answer) a motion for dismissal of petitioner Vance Jandreau's instant case of a petition for Writ of

Mandamus CV-#16-05-002 based upon the following stated defectives in the filings of CV-#16-05-002 and also deficiencies of Federal Rules of Civil Procedure 12-b-4 insufficient process and failure to state a claim upon which relief can be granted Rule 12-b-6; as **No** exhibit of a valid and certified petition for recall (*in accordance with Lower Brule Sioux Tribe's Constitution, Amendment V, Article VII Meetings, Section 2 with quorum voting in favor of recall election*) was presented and served upon respondent, nor was the (*mentioned only by special judge of any such document*) Writ of Mandamus ever served upon respondent in this instant case of CV-#16-05-002.

Date:

May 19, 2016


Pro-Se Respondent Kevin Wright

LOWER BRULE SIOUX TRIBAL COURT) IN TRIBAL COURT
 LOWER BRULE SIOUX RESERVATION) CIVIL DIVISION
 LOWER BRULE SIOUX JURISDICTION) CV-#16-05-002 0042

Vance Jandreau) The listed respondent Kevin Wright
 Petitioner) in this action of Lower Brule Tribal
 Court case.
 vs.) CV-#16-05-0022
 Kevin Wright) Notice Wright is demurring to petitioner
 Vice Chairman) instant action consisting of an
 extraordinary writ of mandamus.

COMES NOW, listed Respondent Kevin Wright Who demurs to the tribal court special Judge BJ Jones' order for respondent to file an answer to petition Vance Jandreau's Instant action of a Writ of Mandamus (to enforce a recall petition but this exhibit was not served upon respondent) wherein Vance Jandreau is listed as the petitioner and stamped as a tribal court document (recall petition). The demur is also based upon the following arguments;

- (1) No document and/or exhibit labeled recall petition was ever served upon the listed respondent Kevin Wright in this court action yet the respondent has been ordered by the special judge to file an answer to petitioner Vance Jandreau's instant action!
- (2) Respondent asked in his response of demur (answer in the alternative); where is the document or exhibit that called petition for recall?
- (3) No document or complaint labeled a Petition for Writ of Mandamus wherein Vance Jandreau was named petitioner was ever served upon the listed respondent Kevin Wright in

this instant court action CV-#16-05-002 yet the respondent has been ordered by the special judge to file an answer to petitioner Vance Jandreau's Instant action with no documents attached or presented to respondent in any legal method!

(4) Petitioner in this Lower Brule Tribal Civil Court instant action of case CV-#16-05-002 Vance Jandreau had never brought a certified petition for recall that had 30% of voters who voted in the last regular election (Amendment III, Article V, Section 4) to the Lower Brule Tribal Council with a quorum present and with a quorum voting in favor of accepting the petition (Amendment V, Article VII Meetings, Section 2).

(5) The Defendant (Respondent) in this case CV-#16-05-002 will demur to the complaint or in this instant case the filed action of Writ for Mandamus. The demurrer Respondent, Kevin Wright, challenges the legal sufficiency of the cause of action (in a compliant) or filed action in this Instant case of a writ of mandamus. See *Blank v Kirwan* 39 cal. 3D 311, 16 (Cal 1985).

(6) Respondent argues to the Tribal Civil Court that Petitioner Vance Jandreau's cause of action in this instant case/action of a Writ of Mandamus CV-#16-05-002 does not state a cognizable claim (for example, the claim is nonsense) also it does not state all the required needed elements for a recall petition. See *Alamo Recycling, LLC v Anheuser Busch InBev Worldwide, Incl*, 239 Cal App. 4th 983 985, (Cal App. 4th Dist. 2015) at HN#2: "A general demurrer tests the legal sufficiency of a complaint by claiming it fails to state a cause of action based on defects appearing on its face or from matters subject to judicial notice. In other words, a general demurrer searches the complaint for all defects going to the existence of a cause of action and places at issue the legal merits of the action on assumed facts," city *Blank v Kirwan* 39 cal. 3D 311, 316 (Cal 1985).

(7) In this instant case the required element for a recall petition is stated in the Lower Brule Sioux Tribe's Constitution Amendment V, Article VII, Meetings, Section 2 (quorum present and with quorum voting in favor) and Amendment III, Article V, Section 4 (Vacancies). No such certified document and/or petition for recall that was in accordance with Lower Brule Constitution requirements has never been served on respondent in this case CV-#16-05-002. So this challenged cause of action in the instant case of Writ of Mandamus with a recall petition as exhibit plus the entire complaint or action of Writ of Mandamus must be essentially thrown out or dismissed at the demurrer stage as both documents are not legally sufficient! See *Blank v. Kirwan* 39 cal. 3D 311, 316 (Cal 1985).

(8) Respondent states he **demurs** to the Special Judge B.J. Jones order for respondent to file an answer to the petitioner Vance Jandreau's Instant case of a Writ of Mandamus rather than file an answer (as his primary response) because petitioner Vance Jandreau's filing is very defective and not legally sufficient based upon following facts, see *Alamo Recycling, LLC v Anheuser Busch InBev Worldwide, Inc.*

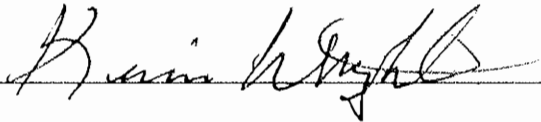
(9) Below are the general rules for a writ of mandamus

Service of Writ

The Writ of Mandamus **shall be served upon the defendant (respondent) personally, by copy**, by a person specially authorized by the court or judge issuing the writ. Such officer or person must report his proceedings therewith to the court. When the service is made by a person not an officer, the return must be verified by his affidavit. **Pleading –effect** On the Writ of Mandamus, or as the court allows, the defendant may answer as in a civil action. If the writ is allowed by a single judge, said defendant may demur. The plaintiff may demur to the answer or reply to new matter therein and the defendant may demur to the reply as in

a civil action. The pleadings in a Writ of Mandamus have the same effect and must be construed, may be amended and issues of fact made by them must be tried and further proceedings thereon had, in the same manner as in civil actions.

End of respondent's demur

A handwritten signature in black ink, appearing to read "Kevin Wright", is written over a horizontal line.

Date: May 19, 2016

signed by Pro-Se Respondent Kevin Wright

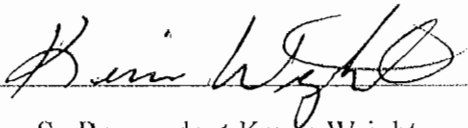
(11) Respondent's Answer Provided Only As An Alternative Filing:

In the alternative the respondent Kevin Wright files his answer to the special judge B. J. Jones order by stating that he, the respondent in this instant action, cannot file an adequate answer as he was never served with the copy of the petition Vance Jandreau's petition for Writ of Mandamus or petitioner's exhibit labeled recall petition mentioned in the special judge's order for respondent to provide an answer to Writ of Mandamus! Also Respondent was never served with any exhibit of a so called PETITION FOR RECALL that needed to be previously presented to the Lower Brule Tribal Council (with a quorum present as required by Article IV, Section 2 and with quorum voting in favor) by petitioner Vance Jandreau; then if tribal council failed to call for a recall election; from that date the petitioner who presented recall action; (if it was Vance Jandreau) to tribal council had 30 days to file action in tribal court; providing a recall petition was certified as being a valid document with the required 30% of voter's signatures who had voted in the last regular election. (See Amendment III, Article V, Section 4) The petition for recall had to be presented to a quorum of the tribal council with a quorum voting in favor for recall

election. To respondent's best recollection and knowledge no person, including Vance Jandreau, had ever presented a qualified petition for recall of tribal council officials containing 30% of voters who had voted in last regular tribal election had been presented to the tribal council and with a quorum voting in favor of a recall election. Vance Jandreau instant case of Writ of Mandamus is very defective and must be dismissed as it fails to present any action or valid claim upon which relief can be granted. Federal Rules of Civil Procedure Rule 12-b-6.

Date:

May 19, 2016


Pro-Se Respondent Kevin Wright

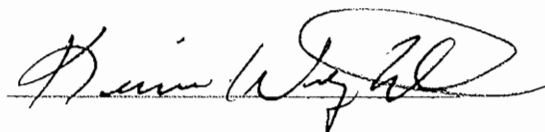
CERTIFICATE OF SERVICE

I, Kevin Wright, the listed respondent in the instant case of CV-#16-05-002 Writ of Mandamus hereby certify that on day of May 19, 2016 by personal service I have caused to be served upon the Lower Brule Tribal Court's clerk of courts; my response to the special Judge B.J. Jones order dated May ~~18~~ 2016. The clerk of courts will then make service on opposing party.

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Date:

May 19, 2016



Pro-Se Respondent Kevin Wright
PO Box 57
Lower Brule, SD 57548-0057

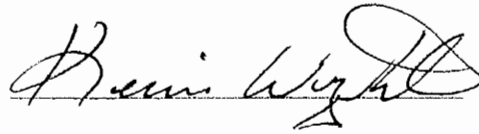
Lower Brule Sioux Tribal Court
Clerk of Court – In Hand Delivery

Email: Hon B. J. Jones (hon.bj.jones@gmail.com)

CERTIFICATE OF SERVICE

I, Kevin Wright, the listed respondent in the instant case of CV-#16-05-002 Writ of Mandamus hereby certify that on date of May 19, 2016 by personal service I have caused to be served upon the Lower Brule Tribal Court's clerk of courts; my response to the special Judge B.J. Jones order dated May 6, 2016. The clerk of courts will then make service on opposing party.

Date: May 19, 2016

A handwritten signature in cursive script that reads "Kevin Wright". The signature is written in black ink and is positioned above a horizontal line.

Pro-Se Respondent Kevin Wright
PO Box 57
Lower Brule, SD 57548-0057

Lower Brule Sioux Tribal Court
Clerk of Court – In Hand Delivery

Email: Hon B. J. Jones (hon.bj.jones@gmail.com)

VOLUNTARY STATEMENT

DATE: 5/19/16 TIME: _____ am/pm PLACE: _____

I, Kevin Wright am 48 years old and I live at 153 Splintered Horn Ave. Lower Brule, SD 57548

I am giving this statement to L.B.S.T. Courts I.D. _____, who has identified themselves as a _____ and he/she has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers or favors, and without compulsion or persuasion by any person or persons whomsoever:

All Richard G.F. served me with what the writ~~s~~ of mandamus with no attachments, I am unaware of what was served to me.

I have read this statement consisting of 1 page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Kevin Wright 5/19/16
Signature of person making voluntary statement

The above warnings were given by and this voluntary Statement was taken by:

Maurice Janydean

Witness

(This must be one and the same person as named above)