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IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. OP 22-0587

MELISSA GROO, Petitioner, v. THE MONTANA ELEVENTH JUDICIAL DISTRICT COURT FLATHEAD COUNTY, THE HONORABLE AMY EDDY Respondent.	MOTION TO STAY DISTRICT COURT PROCEEDINGS
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Petitioner, Melissa Groo (“Groo”), hereby moves this Court for an Order staying the litigation which is ongoing in the Montana Eleventh Judicial District Court for Flathead County, Cause No. DV-22-087.

Counsel for Plaintiffs has been contacted and objects to this motion. Counsel for Defendants Heather Lynn Keepers and Justin Hayes Glassman, agrees to a stay. Defendant Jeanette Tartaglino who filed an Answer *pro se* also agrees to a stay.

The factual and legal support for this request is set forth herein.

ARGUMENT

A. Legal Authority

Rule 14(7)(c) of the Montana Rules of Appellant Procedure provides, as follows:

The supreme court may order a stay of further proceedings in the other court, pending the supreme court's disposition of the petition.

The undersigned could find no direct authority in which this Court has identified the standard for seeking a stay as it considers a Writ of Supervisory Control. This Court, however, has provided guidance on when a stay is appropriate.

The leading case on when a stay of proceedings motion should be granted is Landis v. North American Co. (1936)... The various pronouncements of *Landis* have been followed and reestablished over the years. The court in... sets out the important legal considerations, initially brought out in *Landis*, to follow when determining whether a stay in the proceedings should be utilized. The court stated:

"1. A court has inherent power to stay proceedings in control of its docket -- after balancing the competing interests.

"2. 'The suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else...

"3. 'Especially in cases of extraordinary public moment, the individual may be required to submit to delay and not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted.'

Landis v. N. Am. Co., 299 U.S. 248 (1936)

B. Status of Underlying Litigation

A case scheduling order has been entered in the underlying proceedings. *See* Exhibit “1”. It sets forth the following dates:

March 3, 2023:	Expert Witness Disclosures
May 5, 2023:	Discovery Completion
June 9, 2023:	Motions for Summary Judgment
June 23, 2023:	All other motions shall be filed, including motions in limine.
October 2, 2023:	Final Pretrial Hearing
October 30, 2023:	Trial Commences

C. Supervisory Control Briefing Schedule

Pursuant to the Court’s Order of December 22, 2022, Groo is to file her brief on or before January 20, 2023. Thereafter, briefing will proceed in accordance with Rule 13(1) of the Montana Rules of Appellant Procedure. The briefing schedule is as follows:

- Groo’s Brief is due January 20, 2023
- Answer Briefs are due February 21, 2023

- Reply briefs are due on March 7, 2023
- Today, the Court set oral argument for March 31, 2023.

D. Application of Factors

When the Landis legal considerations are applied to this case, this motion to stay proceedings must be granted.

First, the importance of this issue cannot be understated. In its December 22, 2022 Order, this Court stated that “This matter concerns to what extent social media activity can serve as a basis to exercise specific personal jurisdiction... we conclude a more comprehensive and in-depth analysis is warranted. Accordingly, the parties are to provide the Court with more extensive briefing ...”. To determine if a stay should be granted, the court must balance the competing interest to determine if its inherent power should be used to stay these proceedings.

The issue before this Court is an issue of personal jurisdiction over Groo. The mere fact that Groo is being required to defend a claim where personal jurisdiction is at issue, and appears to be a case of first impression, establishes the hardship. It also shows the inequity of these proceedings continuing on a dual track. If a stay is not entered, while Groo conducts a comprehensive and in-depth analysis of the personal jurisdiction issue, she will be required to continue to defend the claim at a significant commitment of time and expense. If this Court determines that Montana lacks personal jurisdiction over Groo, this expense and commitment to the

litigation process in a state that has no jurisdiction will have created an inequitable outcome.

A review of the case scheduling order and this Court's briefing schedule establishes the need for a stay. Without a stay, no party will be permitted to stand down waiting for this Court's determination. Why? Experts are to be disclosed March 3, 2023, prior to the filing of the final brief and argument. Discovery must be completed by May 5, 2023, approximately one month after argument is presented. Assuming this Court takes 60-90 days to analyze the issue, the hardship and inequity is clear. Therefore, there is no question Groo will suffer hardship and inequity.

While this alone is sufficient to warrant a stay, Plaintiffs have objected to Groo's request for a stay. Plaintiffs, however, will not be damaged by a stay. An examination of Plaintiffs' Complaint shows Plaintiffs allege two claims against Melissa Groo, claims for the recovery of damages arising from Groo's participation in a "Tortious Interference with Contractual Relations" (Count 2) and "... Prospective Economic Advantage (Business Relations)" (Count 3). In their prayer, Plaintiffs seek damages, compensatory damages and lost profits and business opportunities. The alleged interference arose from Groo's use of social media. There is no allegation that the activity continues. There is no assertion of ongoing damage. There is no request for any form of injunctive relief. Therefore, this is a case where, as stated in Landis, Plaintiffs "may be required to submit to delay and


not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted.” This quote is directly applicable to this case. Plaintiffs’ claim, while delayed for a brief period of time, will not be altered. Plaintiffs’ damages are arguably quantifiable and will not change.

CONCLUSION

Without a stay, Groo will spend tens of thousands of dollars in preparing a defense of the claims, a defense in the state of Montana that may not be necessary if this Court determines that Montana does not have personal jurisdiction over Groo. If, on the other hand, the court finds that there is a basis for personal jurisdiction to extend to Groo, she will then incur the same expense to prepare the case for trial knowing such expense is necessary. Only after that determination should the litigation proceed. Given that a clear case of hardship exists, a stay must be ordered.

DATED this 4 day of January 2023.

COTNER RYAN LAW, PLLC

By: 
David B. Cotner

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 16(3), I certify that this Brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office Word is 1,104 words, excluding certificate of service and certificate of compliance.



David B. Cotner

CERTIFICATE OF SERVICE

I, the undersigned, of Cotner Ryan Law, PLLC, hereby certify that on January 4th, 2023 a true and correct copy of the foregoing was filed with the Montana Supreme Court. Additionally, a copy was provided to the following through the Montana Court Filing System:


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A handwritten signature in blue ink, appearing to be "Jenny1287", is written over the contact information for Jeanette N. Tartaglino.

Amy Eddy
 DISTRICT COURT JUDGE
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MONTANA ELEVENTH JUDICIAL DISTRICT COURT
 FLATHEAD COUNTY

<p>TRIPLE D GAME FARM, INC. a/k/a TRIPLE D WILDLIFE, a Montana Corporation, LORNEY "JAY" DEIST, as an individual, and KIMBERLY DEIST, as an individual,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p>v.</p> <p>HEATHER LYNN KEEPERS, as an individual, JUSTINE HAYES GLASMAN, as an individual, JEANETTE TARTAGLINO, as an individual, MELISSA GROO, as an individual, JOHN DOES 1 – 4; and CORPORATIONS A – D.</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>Cause No. DV-22-087(A)</p> <p style="text-align: center;">RULE 16 SCHEDULING ORDER</p>
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Following the Rule 16(b)(1) Scheduling Conference with counsel for the parties on 8/25/2022, at which counsel for the Defendants did not attend, and pursuant to Rule 16(b)(3), M.R.Civ.P., the Court sets the following deadlines in the above-entitled cause:

- (1) On or before **9/16/2022**: Amend pleadings, join additional parties.
- (2) On or before **3/3/2023**: Names and addresses of the parties' expert witnesses, together with the information called for in Rule 26, M.R.Civ.P., must be furnished to all opposing parties and filed with the Court. Establishment of this deadline does not minimize the obligation to fully comply with all discovery requests, including the obligations outlined in Rule 26(d)(2), Mont.R.Civ.P.
- (3) On or before **5/5/2023**: DISCOVERY COMPLETED. The term "completed" means that discovery requests shall have been submitted so that the required responses are due on or before this date, and depositions shall have been completed. This date also applies to deadline for responses to any *Subpoena* issued under Rule 45, M.R.Civ.P. The parties should bear in mind that as the case develops they may choose to stipulate amongst themselves to modify or extend discovery, consistent with Rule 29, Mont.R.Civ.P. However, absent good cause, this Court will not extend this deadline, nor entertain discovery motions based on post-deadline

occurrences. *Should a discovery dispute arise, the parties are encouraged and expected to contact the Court to arrange an in-chambers and informal discovery conference so that the Court can help facilitate resolution of the dispute in a timely manner.*

- (4) On or before **6/9/2023**: Motions for summary judgment with supporting memoranda and affidavits shall be filed. The parties are advised of their obligation to comply with the time requirements contained in Rule 56(c), Mont.R.Civ.P., applicable to filing response and reply briefs, and requesting oral argument. The Court will not issue orders setting the briefing schedule and will deem the matter ripe for review upon expiration of the time provided by Rule 56(c), Mont.R.Civ.P., or at the close of oral argument, if requested. ***Counsel are required to submit hard copies of all motions for summary judgment, and attached exhibits, to the Court's chambers at the time of electronic filing.***
- (5) On or before **6/23/2023**: All other motions shall be filed, including motions *in limine*. The parties are advised of their obligation to comply with the time requirements contained in Rule 2, Unif.Dist.C.R., applicable to filing response and reply briefs, and requesting oral argument. The Court will not issue orders setting the briefing schedule and will deem the matter ripe for review upon expiration of the time provided in the Rules, or at the close of any oral argument.
- (6) The Court WAIVES the Montana Eleventh Judicial District's Local Rule 5(A) requirement for a mandatory settlement conference.
- (7) A Final Pretrial Hearing will be held on **10/2/2023, at 9:00 a.m.** A Pretrial Order shall be prepared per Rule 5, Unif.Dist.C.R., and must be submitted prior to the Final Pretrial Hearing. The parties must come to the Final Pretrial Hearing prepared to discuss any outstanding matters not addressed in the Pretrial Order.
- (8) The Jury Trial is hereby set for the civil jury term beginning **10/30/2023**. A date certain for trial will be set following the Final Pretrial Hearing based on the Court's calendar and a reasonable estimate of the length of time needed for trial. The Court will have an attorney's conference at 8:30 a.m. the first day of trial.

Failure of counsel or parties to adhere to this scheduling order may result in the loss of trial date, sanctions, or notification to clients as to the reasons for further delay. Regardless, the Court will not consider any modification to this Rule 16 Scheduling Order absent good cause. Rule 16(b)(4), Mont.R.Civ.P. The parties are on notice that extension of any deadline may jeopardize the Court's ability to timely consider and rule on any disputes in advance of the trial date.

At any point the parties may file a joint request certifying: (1) there are no outstanding matters for the Court to resolve, (2) the parties are prepared to go to trial, and (3) a pretrial order has been agreed to by all the parties. Upon such a request the Court will schedule the matter for trial at its earliest available date.

DATED AND ELECTRONICALLY SIGNED AS NOTED BELOW.

CERTIFICATE OF SERVICE

I, David Brian Cotner, hereby certify that I have served true and accurate copies of the foregoing Motion - Stay to the following on 01-04-2023:

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Electronically Signed By: David Brian Cotner
Dated: 01-04-2023