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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA-23-0640

GRAND RIVER ENTERPRISES SIX
NATIONS, LTD.,

Appellant,

v.

AUSTIN KNUDSEN, in his official
capacity, Attorney General of the State
of Montana,

Appellee.

**RESPONSE TO APPELLANT'S SECOND NOTICE OF
SUPPLEMENTAL AUTHORITY**

Appellee Austin Knudsen, in his official capacity, Attorney General of the State of Montana (“AG”) provides this response to Appellant Grand River Enterprises Six Nations, Ltd.’s (“GRE”) Second Notice of Supplemental Authority (“Notice”).

On July 3, 2024, GRE filed a Notice with this Court which contains an Order from the Federal District Court of Montana – Helena Division (“Federal Decision”). The Federal Decision granted summary judgment to GRE based on a limited federal preemption issue not raised in this case. *See* Federal Decision at p. 9. The Federal Decision determined that federal law preempts the AG’s removal of GRE based on a purported violation of the Food, Drug and Cosmetic Act (“FDCA”), but that claim is not present in this case. *See* Op.Br. at p. 4 (GRE did not raise the FDCA “federal claims ... in the state court.”).¹

To the extent the Federal Decision went beyond consideration of the FDCA, it supports the AG’s position. “The Court agrees with the Montana state district court that a failure by GRE to comply with other local, state, or federal laws may provide a basis for the [AG] to remove GRE from the Montana Tobacco Directory pursuant to the AVC.” Federal Decision at pp. 11–12.

¹ The Federal Decision also possesses the same infirmities identified in Appellee’s Response to GRE’s First Notice of Supplemental Authority. *See* Objection to Motion for Supplemental Authority, at 2–3 (June 19, 2024). Federal courts “do not have appellate jurisdiction over state courts and their decisions are not conclusive on state courts, even on question of federal law.” *State v. Robinson*, 2003 MT 364, ¶ 14, 319 Mont. 82, 82 P.3d 27.

The Federal Decision raises an issue of remedy that the parties have not briefed due to GRE’s litigation strategy, as GRE filed multiple cases challenging the enforcement actions in different jurisdictions. *See* Op.Br. at pp. 3–4, 13. That question of law properly sits in the lower court, not on GRE’s appeal of the preliminary injunction denial.

The Federal Decision also notes that it agrees with the Montana District Court, First Judicial District, Lewis and Clark County (“State Court”). “A failure by GRE to comply with other local, state, or federal laws may provide a basis for the [AG] to remove GRE from the Montana tobacco Directory pursuant to the AVC.” Federal Decision at p. 12. The question of AVC interpretation and GRE’s violation of state law remain questions for the State Court, as was mutually agreed upon in the AVC. *See* AVC at ¶ 7.

Accordingly, the Federal Decision does not control any claim in this case and its limited persuasive value supports the state district court’s denial of a preliminary injunction.

DATED this 9th day of July, 2024.

/s/ Kali L. Griffin

KALI L. GRIFFIN
Assistant Attorney General

/s/ Terisa Oomens

TERISA OOMENS
Agency Legal Counsel

Counsel for Appellee State of Montana

CERTIFICATE OF SERVICE

I, Terisa Marie Oomens, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Other to the following on 07-09-2024:

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Electronically signed by Kayla Churchill on behalf of Terisa Marie Oomens

Dated: 07-09-2024