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6 *Attorneys for Petitioner*

7 MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

8 IN RE THE MARRIAGE OF:
9 KAREN LYNN MAYBEE,
Petitioner,
10 and,
11 SCOTT BYRON MAYBEE,
12 Respondent.

Cause No.: DR-21-349C

**PETITIONER’S RESPONSE TO
RESPONDENT’S REQUEST FOR STAY**

13 COMES NOW Petitioner, Karen Maybe (“Karen”) by and through her undersigned
14 counsel, and hereby files this Response to *Respondent’s Motion to Stay Proceedings*. Respondent
15 Scott Maybee’s (“Scott”) Request should be denied for the reasons set forth below.

APPLICABLE FACTS

- 17 1. The parties were married in October 2001.
- 18 2. The parties have resided in Montana since 2011.
- 19 3. Scott is a member of the Seneca Nation of the Iroquois Confederacy and has ownership
20 interest in multiple businesses, including convenience stores and online tobacco and
21 hemp sales, that operate from reservation lands in the State of New York.
- 22 4. On October 22, 2021, Scott filed his *Response to Petitioner’s Verified Petition for*
23 *Dissolution* admitting to domicile, as well as personal and subject matter jurisdiction.



- 1 5. The parties have been in litigation for over two (2) years and have not yet reached a
2 settlement in this case.
- 3 6. On October 4, 2023, Scott’s attorney provided a letter to undersigned counsel titled *Re:*
4 *Scott Maybee-Additional Property* in which Scott discloses that he owns property on
5 Seneca Nation Tribal Land. Scott indicates that he “forgot” about the land and alleges
6 that the land was transferred to him by his mother. *See attached Exhibit 1.* So it appears
7 that Scott has either recently recovered from prolonged amnesia regarding his ownership
8 interest in real property located on the Reservation, or he has been lying to the Court.
- 9 7. The parties just filed their 2022 tax returns, which indicate that the parties are Montana
10 residents. *See attached Exhibit 2.* In fact, the parties’ tax returns filed for the last 10 +
11 years indicate that they are Montana residents.
- 12 8. On October 30, 2023, Scott filed a *Petition Requesting Relief from a Foreign Court*
13 *Interference*, in the Peacemakers Court of the Seneca Nation of Indians (“Petition”). *See*
14 Respondent’s **Exhibit A** attached to the Petition.
- 15 9. The Petition requests declaratory rulings that the Peacemakers Court has sole and
16 exclusive jurisdiction to adjudicate and determine value therein, certain assets and
17 income streams that are currently being considered in this dissolution. *Id.*
- 18 10. Scott’s Petition is factually inaccurate. Scott states, “I am domiciled on the nation’s
19 Cattaraugus Territory and presently reside in the State of Montana.” Petition, ¶ 3.
- 20 11. The parties have never lived on reservation lands during the marriage.
- 21 12. On November 8, 2023, Scott filed his *Motion to Stay Proceedings* with this Court.

22 **LAW AND ARGUMENT**

23 **I. Respondent’s Request for Stay is Without Merit.**

1 This Court should not stay any further proceedings regardless of the Peacemakers Court
2 of Seneca Nations of Indians grants or denies any or all judgments requested.

3 **a. Respondent Relies on Bad Case Law.**

4 As a preliminary matter, the case law that Scott appears to rely upon, *Wippert v.*
5 *Blackfeet Tribe of Blackfeet Indian Reservation* (1993), 260 Mont. 93, 859 P.2d 420. *Wippert*
6 involved debtor, Wippert, who borrowed money from the Blackfeet Tribe and then defaulted on
7 the loan. The tribal court ruled against Wippert. Wippert then tried to appeal the decision in
8 state district court on the basis that the notice requirements under the UCC were not met. The
9 trial court determined that it lacked subject matter jurisdiction over the cause. The appellate
10 court held that there was no subject matter jurisdiction over a suit *against the tribe* because the
11 tribe retained sovereign immunity.

12 Of note, *Wippert* was overturned by *Green v. Gerber*, 2013 MT 35. Second, this matter
13 does not involve borrowing money from a tribe. This matter is a dissolution case where neither
14 party lives on a reservation; the children are non-Indian children; and no tribal land or Indian
15 Trust Land is being distributed, only evaluated for purposes of completing an equitable, marital
16 property settlement agreement.

17 Notably, “[w]hen on-reservation conduct involving only Indians is at issue, state law is
18 likely to be inapplicable.” *Comm’r v. Maybee*, 2007 Me. Super. LEXIS 281, *2-3. (quoting
19 *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980)). But in cases where
20 “Indians go beyond reservation boundaries, a nondiscriminatory state law is generally
21 applicable in the absence of ‘express federal law to the contrary.’” *Id.* (quoting *Mescalero*
22 *Apache Tribe v. Jones*, 411 U.S. 145, 148-149 (1973)). Of course, Scott should already know
23
24

1 this because he unsuccessfully argued lack of subject matter jurisdiction in 2007 with the Maine
2 Supreme Court and failed.

3 ***b. Respondent does not demonstrate a clear case of hardship or inequity in being***
4 ***required to go forward.***

5 Scott cites *Flying T Ranch, LLC v. Caitlin Ranch, LP.*, 2020 MT 99, which held that an
6 applicant for a stay, “must make a clear case of hardship or inequity in being required to go
7 forward.” However, Scott does not demonstrate a clear case of hardship or inequity in being
8 required to go forward. Pursuant to § 25-4-503, MCA, “upon good cause and in furtherance of
9 justice, the court may, in its discretion, postpone a trial or proceeding...” Additionally, the
10 following consideration has been adopted by the Montana Supreme Court to determine whether
11 proceedings in one court should be stayed pending decisions on proceedings in another court: “the
12 suppliant for a stay must make out a clear case of hardship or inequity in being required to go
13 forward, if there is even a fair possibility that the stay for which he prays will work damage to
14 someone else.” *Henry v. District Court*, 198 Mont. 8, 645 P.2d 1350, 1350-1352. As such, Scott
15 must argue a clear case of hardship or inequity if there exists a fair possibility a stay will damage
16 another party. *Id.* Furthermore, a Court should consider the effect on proceeding may have upon
17 another related proceeding. *Schara v. Anaconda Co.*, 187 Mont. 377, 388-84, 610 P.2d 132, 135-
18 136.

19 In this case, Scott contends that a stay in these proceedings should be granted because good
20 cause exists due to “potential issues of tribal sovereignty, the doctrine of comity, and the possibility
21 of conflicting judgments subjecting both parties to conflicting orders and mandates.” *Motion to*
22 *Stay Proceedings* (emphasis added). Respondent neither expounds upon these assertions and their
23 constitutions of “good cause”, nor provides any relevant legal authority to support these claims.
24

1 He merely mentions potential issues. Absent authority or discussion, Scott does not “make out a
2 clear case of hardship or inequity in being required to go forward” and his contention that “good
3 cause” exists is not only misplaced, but completely baseless.

4 ***c. Respondent offers no basis for this Court exercising improper subject matter
5 jurisdiction over this matter.***

6 Subject matter jurisdiction addresses whether the court has the authority to adjudicate the
7 matter. A dissolution proceeding commences when a petition is filed. §40-4-105, MCA, and a
8 petition for dissolution must establish that jurisdiction over dissolution exists. §40-4-105(1)(b),
9 MCA. §40-4-105(1)(a), MCA, requires that one party to of the marriage has maintained a domicile
10 for 90 days preceding the filing of the action. In this case, not one party, but both parties are
11 residents of Montana and have been throughout the entirety of these proceedings. The petition for
12 dissolution §40-4-202(1), MCA, requires that a Court equitably apportion marital property in a
13 dissolution proceeding. There is nothing in the statute or the applicable case law that provides
14 assets that are not physically located within Montana cannot be valued and considered when
15 determining the equitable distribution of the marital estate.

16 Further, motions to dismiss for lack of subject matter jurisdiction may be raised at any time
17 by any party, and a court must dismiss an action if it determines that it lacks subject matter
18 jurisdiction, Mont. R.Civ.P.12(h)(3). A state court’s exercise of jurisdiction is improper if it is
19 preempted by federal law or if it infringes on tribal self-government. (emphasis added) *Big Spring*
20 *v. Conway*, ¶46. Here, Scott neither alleges nor cites to any federal law that preempts application
21 of Title 40 of MCA regarding subject matter jurisdiction over dissolution proceedings and the
22 equitable distribution of marital property.

1 There are also no potential issues of tribal sovereignty here. “[T]he exercise of state
2 jurisdiction over activities occurring entirely on Indian lands is an infringement on inherent tribal
3 authority and is contrary to principles of self-government and tribal sovereignty.” (emphasis
4 added). *In re Fair Hearing of Hanna*, 2010 MT 38, ¶ 17, 355 Mont. 236, 227 P.3d 597. Scott
5 requests declaratory judgments that the Peacemakers Court has sole and exclusive jurisdiction to
6 adjudicate and determine value therein of certain assets and income streams that are currently
7 being considered in this dissolution. However, the business interests at issue involve activity that
8 does not take place entirely within the reservation. Scott, through several businesses, sells tobacco
9 and hemp products at retail over the Internet and by mail order that reaches beyond the reservation
10 throughout the United States. “Absent federal law to the contrary, Indians going beyond
11 reservation boundaries have generally been held subject to non-discriminatory state law otherwise
12 applicable to all citizens of the State.” *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49.
13 Furthermore, “when...state interests outside the reservation are implicated, States may regulate
14 the activities even of tribe members on tribal land.” *Nevada v. Hicks*, 533 U.S. 353, 362-66. Here,
15 Scott’s business interactions with consumers extend beyond the boundaries of the reservation.

16 Furthermore, Karen does not directly seek “ownership rights [over property]” over any
17 business interests located within the Seneca Nation as contemplated in Scott’s *Petition Requesting*
18 *Relief from a Foreign Court Interference* (“Petition”), in the Peacemakers Court of the Seneca
19 Nation of Indians. ¶ 5,6. Rather, Karen asserts that these business interests and property are subject
20 to inclusion in the determination of the value of the marital estate. Therefore, Scott’s claims are
21 misplaced, in stating, “my spouse demands that the State court order a distribution of my
22 separate Nation-sourced assets.” Petition, ¶ 13. Scott’s Petition seems nothing more than an
23 attempt to subvert the District Court dissolution proceedings.

1 **CONCLUSION**

2 Ultimately, Scott has not remotely demonstrated any hardship or inequity would befall him
3 in being required to go forward in the dissolution action, nor offered even a scintilla of evidence
4 that this Court is exercising improper subject matter jurisdiction over this matter. This is merely a
5 bad faith delay tactic, consistent with Scott’s conduct throughout the entirety of this case.

6 WHEREFORE, and based on the foregoing, Petitioner respectfully requests the Court for
7 the following relief:

- 8 1. That the Court DENY Respondent’s *Request for Stay* for lack of merit as it fails to
9 provide any legal or factual basis whatsoever,
10 2. That the Court grant Petitioner reasonable attorney fees and costs incurred in having
11 to respond to the motion; and
12 3. That the Court grant any other relief deemed just and proper under the circumstances.

13 DATED this 22nd day of November 2023.

14 Pabst Law Firm

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16 Caitlin Pabst
17 *Attorney for Petitioner*
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1 **CERTIFICATE OF SERVICE**

2 The undersigned, a representative of Pabst Law Firm hereby certifies that on the 22nd day
3 of November 2023, a true and correct copy of the foregoing **RESPONSE TO RESPONDENT'S**
4 **REQUEST FOR STAY** was served on the following individuals, in the manner indicated:

5 Kathryn Keiser
6 Kathryn Keiser Family Law, PLLC
7 676 Ferguson Ave, Suite 7
8 Bozeman, MT 59718

- First-class mail, postage prepaid
- FedEx
- Hand Delivery
- Fax: _____
- Electronic Service

9 Charles J. Cook
10 Pierce Teuween
11 Cook Phelan, PLLC
12 389 S. Ferguson Ave. Suite 205
13 Bozeman, MT 59718

- First-class mail, postage prepaid
- FedEx
- Hand Delivery
- Fax: _____
- Electronic Service

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24
By: Caitlin Pabst
Caitlin Pabst

COOK PHELAN

ATTORNEYS AT LAW

October 4th, 2023

VIA EMAIL

Re: Scott Maybee—Additional Property

Pabst Law Firm
113 E. Oak St., Suite 2D
Bozeman, MT 59715
406-312-9091

Dear Caitlin,


It has recently come to our attention that Scott has a possessory interest in certain parcels of land on Seneca Nation Tribal land, that may have not yet been formally disclosed in this dissolution process. Scott's mother recently reminded him that she put a parcel into his name for estate planning purposes, which led Scott to review his records and recall that there are other parcels which may not yet have been disclosed.

At this time, we are unsure of the exact number of parcels, and their location. Scott believes there are three outstanding, but is obtaining the correct paperwork to disclose. We understand we have a duty to disclose this information to you under §40-4-252 MCA, and will do so once we have all information. Please take this letter as a sign of good faith that Scott is not willfully failing to disclose, but simply forgot to include these in his initial disclosure. He believes the value of these parcels are minimal.

Scott is inquiring with a New York attorney regarding the jurisdiction implications of these reservation parcels being divided pursuant to a Montana dissolution. We are unsure of the extent of such implications, but will communicate with you as the question becomes clearer. We may eventually argue these parcels not be considered marital, namely any ones that were transferred to him on behalf of his mother's estate plan. However, that obviously does not waive our duty to disclose under §40-4-252 MCA, and will do that as soon as have all of the requisite information.

If there are any questions, please reach out and I will respond as soon as I can.

Sincerely,



Pierce Teeuwen & CJ Cook
Attorneys for Scott Maybee

Mr. & Mrs. Scott B. Maybee
 PO Box 161594
 Big Sky, MT 59716

Invoice Date: 10/30/2023
 Invoice Number: 194737
 Client Number: 126640

For professional services rendered through 10/19/2023: \$2,805.50

FINAL BILL

Analysis of data, preparation and review of 2022 Individual Income Tax Returns on behalf of Scott B. and Karen Maybee. Includes non-resident NYS and resident Montana State Income Tax Returns.

(Totals 16.5 Hrs: ML - 13.7; KS 2.8)

Courtesy Discount: (\$305.50)
 Invoice Total: \$2,500.00

Accounts Receivable Aging

<u>Current</u>	<u>31 - 60 Days</u>	<u>61 - 90 Days</u>	<u>91 - 120 Days</u>	<u>Over 120 Days</u>	<u>Balance</u>
\$2,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,500.00



Payable upon receipt.
 Invoices 30 days past due are subject to 1.5% interest.
Electronic payments accepted online - Please visit www.tsacpa.com

EXHIBIT 2

CERTIFICATE OF SERVICE

I, Caitlin Terese Pabst, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Response Brief to the following on 11-22-2023:

Nathan Andrew Smith (Attorney)
113 E Oak St. Suite 2d
Bozeman MT 59715
Representing: Karen L. Maybee
Service Method: eService

Charles J. Cook (Attorney)
389 S. Ferguson Ave.
Suite 205
Bozeman MT 59718
Representing: Scott B. Maybee
Service Method: eService

Pierce Tyler Teeuwen (Attorney)
389 S. Ferguson Ave. Ste. 205
Bozeman MT 59718
Representing: Scott B. Maybee
Service Method: eService

Electronically signed by Christopher Bly on behalf of Caitlin Terese Pabst
Dated: 11-22-2023