CJ Cook
Pierce Teeuwen
COOK | PHELAN, ATTORNEYS AT LAW
389 S. Ferguson Ave. Suite 205
Bozeman, Montana 59718
phone: (406) 924-3410
email: cj@cooklawmt.com
pierce@cooklawmt.com

Attorney for Respondent

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

KAREN LYNN MAYBEE, Petitioner, and SCOTT BRYON MAYBEE, Respondent.	Cause No. DR-21-349C **RESPONDENT'S MOTION TO ENFORCE A FOREIGN JUDGMENT AND DISMISS SUBJECT MATTER JURISIDCTION**

COMES NOW, Respondent, Scott Maybee ("Scott"), by and through his Counsel respectfully motions this Court to enforce the January 29, 2024 Seneca Nation of Indians' Peacemaker's Court Declaratory Judgment, and thus in substance dismiss subject matter jurisdiction over adjudication, allocation, valuation, and otherwise consideration of Respondent's non-marital/Nation-sourced assets and income. This Court is tentatively scheduled to hear oral arguments regarding the Seneca Nation of Indians' Peacemaker's Court Declaratory Judgment for April 30, 2024 at 9:30am.

STATEMENT OF FACTS

The parties were married on October 26, 2001, in St. Marteen. Before and during marriage, Scott owned and operated several businesses on the Seneca Nation of Indians ("SNI"). Petitioner's *Petition for Dissolution* was filed on September 17th, 2021, wherein it

alleged the parties resided in Montana for greater than 90 days but failed to assert, with specificity, that this Court had proper jurisdiction over particular assets and income streams located on, and derived from, the SNI.

During the fall of 2023, Scott raised concerns regarding this Court's jurisdictional authority to adjudicate his nation-sourced assets, and subsequently filed a *Motion to Stay Proceedings* on November 8, 2023, which was granted by this Court on December 6, 2023.

During such pause, on November 30, 2023, Scott petitioned SNI Peacemaker's court ("Peacemaker's") for a declaratory judgment on its jurisdictional over his native business, native income, and native land, (hereinafter referred to as "Nation-Sourced Assets"). On January 22, 2024, Petitioner submitted an affidavit to Peacemaker's, stating she does not "…seek ownership or control of any Tribal land or business interest" and "requests only that those interests be 'considered' for **valuation** purposes in the disposition of the total marital assets."

The Peacemaker's ordered a hearing on the issue to be held on January 23, 2023. On January 29th, 2023, the Peacemaker's issued its *Declaratory Judgment re: Designation of Solely Owned Tribal Properties & Assets*. Among other things, it found Scott's Nation-sourced assets are not subject to "any claims, **valuations**, liens or actions by non-citizens or foreign jurisdictions[.] *See* Dkt. 149 *Notice of Declaratory Judgment* p.7 ¶3. Additionally, third-party valuations for Scott's Nation-sourced assets cannot be used for valuation outside of the SNI. Simply put, this Court cannot claim subject matter jurisdiction over Scott's Nation Sources Assets or income stream. Similarly, and substantively the same, this Court should enforce the SNI Peacemaker's court judgment under § 26-3-205, MCA.

ARGUMENT

INTRODUCTION

Scott's position is supported by two core arguments. First, Montana code annotated, § 26-3-205, requires enforcement of SNI's Peacemaker's declaratory judgment, and second, this Court lacks subject matter to adjudicate Scott's tribal interest. In substance, the same effect occurs: either (1) this Court enforces SNI's Peacemaker's judgment under § 26-3-205 thereby recognizing the nation-sourced assets are Scott's individual, non-marital property, which cannot be subjected to claims, actions, valuations or liens, **and/or** (2) this Court lacks subject matter jurisdiction to adjudicate Scott's nation-sourced assets because such authority rests with SNI Peacemaker's Court, at which point It has already made its declaration and judgment thereby rendering its enforcement in the proper jurisdiction.

The Court should agree with both positions and simultaneously enforce the SNI's Peacemaker's judgment and dismiss its authority over the Nation-Sourced Assets. Scott's argument structure is as follows:

> (1) Under § 26-3-205(1), this Court should enforce Peacemaker's adjudication of Petitioner's interest in Scott's Nation-Sourced Assets;
>
> (2) Even if this Court chooses not to enforce a tribal judgment, it lacks subject matter jurisdiction because:
>
> a. The court does not have jurisdiction to subject business licensed and incorporated under SNI laws to its orders, as federal statutes and policy considerations preempt this Court's authority;
>
> b. Its authority to adjudicate Nation-Sourced Assets and the income derived therefrom are preempted by this State's statutory scheme;
>
> c. Principles of tribal self-government under *Big Spring* and *White Mountain Apache* preclude usurpation of tribal authority and sovereignty;
>
> d. Federal and state considerations outweigh any particular interest Petitioner could assert; and
>
> (3) In terms of equity, the Court's lack of jurisdiction precludes equitable evaluation of Scott's Nation-Sourced Assets in comparison to the total marital estate, under §40-4-202(1) MCA.

I. ENFORCING TRIBAL JUDGMENTS IS CONSISTENT WITH MONTANA LAW AND PRINCIPLES OF COMITY.

If the parties dispute a tribal court's assertion of jurisdiction, they should then, appropriately, raise and litigate that issue in the tribal court, as the tribal court has the authority to determine its own jurisdiction. *Agri West*, 281 Mont. 174, 173, 933 P.2d at 811, 812, (citing *Karr v. Karr* (1981), 192 Mont. 388, 407, 628 P.2d 267, 277). If the tribal court does assert jurisdiction, the district court should defer by abstaining as a matter of comity.[1] *Id.* The Supreme Court has consistently recognized Article IV §1 of the Constitution to not apply to tribal courts, but that "the State of Montana should give effect to a tribal court judgment as a matter of comity." *Id.*

Outside of the federal scheme, Montana's legal precedent requires enforcement of tribal judgments. *Wippert v. Blackfeet Tribe of Blackfeet Indian Reservation*, 206 Mont. 93, 97, 859 P.2d 420, 422 (1993). *Wippert* concluded a tribal court's judgment may not carry weight under the Full Faith and Credit Clause, but is still enforceable as a separate action under § 26-3-303, MCA or through principles of comity. *Id.* 260 Mont. at 98, 859 P.2d at 422. Further, under § 26-3-205 (1), MCA, the effect of the judgment of any other tribunal of a foreign country having jurisdiction to pronounce the judgment is as follows:

> (1) In case of a judgment against **a specific thing, the judgment is conclusive upon the title to the thing**.
> (2) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a

[1] The doctrine of comity permits a court to respect and enforce a judgment or order of a foreign court even when enforcement is not constitutionally mandated by the Full Faith and Credit doctrine. Comity is a rule of convenience, deference, and courtesy. Its primary value is to promote uniformity of decision by discouraging repeated litigation, including multi-state litigation over the same claim or issue. Comity is similar to Full Faith and Credit but is not governed by the U.S. Constitution or federal statutes. Moreover, a state court, in conformity with state policy, may by comity give a remedy which the Full Faith and Credit Clause does not compel. *§ 4:8. Comity, Federal Trial Handbook: Civil § 4:8 (2022-2023 Edition).*

> subsequent title and can only be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. (emphasis added).

However, such tribal judgments may not be enforced if tribal jurisdiction was improper. *Wilson v. Marchington*, 127 F. 3d 805, 807 (9th Cir. 1997). But, as *Wilson* puts it, so long as tribal jurisdiction was proper, "principles of comity, not full faith and credit govern whether a district court should recognize and enforce a tribal court judgment."

In Scott's case, SNI's Peacemaker's Declaratory Judgment explicitly makes a judgment against specific things: Scott's Nation-Sourced Assets. Its judgment was clear:

> **ORDERED, ADJUDGED AND DECREED** that any and all real property owned, maintained or otherwise partnered by the Plaintiff, Scott B. Maybee, within the interior boundaries of the Seneca Nation were obtained prior to the 2001 marriage to the Respondent and remain solely and exclusively his non-martial property and exclusively within the jurisdiction of this Court are not subject to any claims, valuations, liens or actions by non-citizens or foreign jurisdictions in accordance to longstanding Customs and Traditions of the Seneca Nation; and it is further
>
> ORDERED that the 'non-marital/Nation sourced assets' (real and business property) were owned solely by the Plaintiff, Scott B. Maybee prior to the 2001 marriage to a non-citizen of the Seneca Nation and are not subject to any claims, valuations, liens or actions by non-citizens or foreign jurisdictions

(emphasis omitted). Dkt. 149 *Notice of Declaratory Judgment* p.7 ¶3-4.

First, Peacemaker's goes through extensive analysis to assure its jurisdictional authority, mitigating any potential issue arising under *Wilson*. It reasoned (a) the property was "located within the [SNI]" and that it "*shall have jurisdiction over any real or personal property located within the territorial jurisdiction of the* [SNI];" (2) its judicial power "extends to all cases arising under [its] Constitution, customs or laws, and any case . . . *a member of the nation or corporate entity residing on, organized on, or doing business on any of the reservations*;" and (3) it has general jurisdiction over "*all property or status of members and*

non-members in dispute." (emphasis included) *See* Dkt. 149 *Notice of Declaratory Judgment* p.2 ¶2-7 (citing § IV, π6 of its Constitution , and SNI CPR Art. 2 §2-101 thru 107)

Second, Peacemaker's judgment, in two separate paragraphs, identifies and delineates Scott's Nation-Sourced Assets, finds them to "remain solely and exclusively his non-marital property," and further concludes they are "exclusively withing [its] jurisdiction=" and not subject to "any claims, **valuations**, liens or actions by non-citizens or **foreign jurisdictions**." (emphasis added) *Id.* Applying the Peacemaker's text as a "judgment against a specific thing," (in this case a set of things) under MCA § 26-3-205 forestalls any further inquiry by this Court into the property. Metaphorically, this Court should, swing its gavel and resolve the issue here.

To rebut Petitioner's presumed jurisdictional position—that Peacemaker's lacked personal jurisdiction—to any extent Peacemaker's lacked *in personam* jurisdiction over Petitioner, it certainly had *quasi in rem* jurisdiction over the land, the businesses, and any interest/income derived by the business, hence MCA § 26-3-205's enforcement of judgments over "thing[s]".

Beyond the technical *quasi* or *in personam* jurisdictional debate, Petitioner's position in SNI Peacemaker's court also confuses the substantive jurisdictional authority. The true question before this Court is whether it is obliged to enforce Peacemaker's decision to preclude any action, valuation, or consideration of Scott's Nation-sourced income. With Peacemaker's clearly asserted jurisdiction, Petitioner must articulate why this Court should not enforce a foreign order.

Peacemaker's rightfully adjudicated Petitioner's interest in Scott's Nation-Sourced Assets pursuant to its constitution, customs and traditions, and this Court should enforce its

terms pursuant to § 26-3-205, MCA, and under general principles of comity. Failure to enforce Peacemaker's judgment places Scott at risk of compiling with competing and conflicting court orders, thus the equitable reason for this Court to defer to doctrines of Comity.

II. THIS COURT LACKS SUBJECT MATTER JURISDICTION TO DISTRIBUTE SCOTT MAYBEE'S NATION-SOURCED ASSETS DUE TO FEDERAL AND STATE JURISPRUDENCE.

Under the commerce clause, the Constitution of the United States reserves the power to regulate commerce with the Indian tribes of the United States. U.S. Const. art. 1, § 8. It has been long recognized that such interaction is exclusively within the federal government's domain under the Constitution's Supremacy Clause. U.S. Const. art. 6 § 2. It would be a fruitless endeavor to engage in the state-versus-federal preemption question due to the federal government's long-standing policy of tribal self-government. *In re Estate of Big Spring*, 2011 MT. 109, ¶ 27, 360 Mont. 370, 255 P.3d 121. Underlying most of the precedent and legal framework surrounding Indian law is this question: "absent governing Acts of Congress, the question has always been whether the state action infringed on the right of the reservation Indians to make their own laws and be ruled by them." *Id.* at ¶ 41. (citing *Williams v. Lee*, 358 U.S. 217, 220, 79 S.Ct. 269, 271; *Fisher v. Dist. Ct. of the Sixteenth Jud. Dist. of Mont.*, 424 U.S. 382, 96 S.Ct. 943, 47 L.Ed.2d 106 (1976)).

Bedrock to these principles is the adherence to "federal treaties, executive orders, and statutes" that circumscribe any residual state power. *Big Spring*, ¶ 27. Applicable to this case is 28 U.S.C § 1360(b), amended by Congress's enactment of Pub. L. No. 83-280 in 1953, and again by the Indian Civil Rights Act of 1968, 25 U.S.C. § 1322. Under federal law, for states to retain residual or exclusive criminal or civil jurisdiction over tribal matters, they must first obtain consent from the tribe. In Montana, such consent must be voted on by the members of

the tribe pursuant to their charter, constitution, or fundamental principle of tribal law and then ratified by the Governor through proclamation. *See* Montana Code Ann. § 2-1-302 thru 306.

Absent tribal and legislature compliance with either statutory scheme, a court cannot infer any residual jurisdiction to handle tribal property and affairs. *Big Spring*, ¶ 40. Instead, the issue presumptively lies in the tribal court. *Agri West v. Koyama Farms, Inc.* (1997), 281 Mont. 167, 171, 933 P.2d 808, 811. The pinnacle case on the issue, *Big Spring*, concludes, clearly:

> the independent but related barriers to assumption of state authority over tribal reservations and members articulated in *Bracker* apply to both regulatory and adjudicatory cases because they encompass the foundational principles of tribal jurisdiction that have been consistently recognized in federal and Montana jurisprudence. Restated, the proper analysis in both regulatory and adjudicatory actions involving tribal members or lands is to ask **whether the exercise of jurisdiction by a state court or regulatory body is preempted by federal law** or, if not, **whether it infringes on tribal self government** [sic]. Moreover, because the barriers are independent of one another, **if either one is met a state may not assume civil jurisdiction** or take regulatory action over Indian people or their territories within the boundaries of their reservations.

Big Spring, ¶46, (Citing *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 100 S.Ct. 2578 (1980)).

To answer the federal preemption question, this Court should look to "'the tradition of Indian sovereignty over the reservation" because it "must inform the determination of whether the exercise of state authority has been pre-empted by operation of federal law.'" *In re Marriage of Wellman*, (1993), 258 Mont. 131, 137, 858 P.2d 559, 563 (citing *White Mountain Apache* 448 U.S.136, 143, 100 S. Ct. 2578, 2583). The party asserting jurisdiction bears the burden of proving "state jurisdiction is not preempted by federal statute or treaty and does not unlawfully infringe on the right of reservation Indians," *Wellman*, 258 Mont. at 137, 858 P.2d at 563. To overcome such burden, the Court must conduct a "particularized inquiry into the

nature of the state, federal, and tribal interests at stake." *Id.* at 140, 565 (citing *White Mountain Apache*, 448 U.S. at 145, 100 S.Ct. at 2584). The state may retain jurisdiction if the Court can articulate an interest that outweighs both federal and tribal concerns.

Without subject matter jurisdiction, this court must dismiss the action pursuant to M. R. Civ. P. Rule 12(b)(1) and (h)(3). Importantly, a party cannot waive subject matter jurisdiction by failing to raise the jurisdictional question earlier in litigation. *Id.* However, as stated in *Wellman* the party asserting state jurisdiction over tribal interests bears the burden of proving such authority. *Wellman*, 258 Mont. at 137, 858 P.2d at 563.

In practice, residual authority for this Court will be hard to articulate. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65 (1981) concludes tribal courts are an appropriate forum for adjudication of disputes affection *personal and property rights* of both Indians and non-Indians. *See also, Iowa Mut. Ins. Co. v. LaPlante* 480 U.S. 9, 107 S.Ct. 971 (1987) (affirming the federal District Court for Montana properly dismissed the action and holding the tribal court should be permitted to determine its own jurisdiction in the first instance); *A.G Organic, Inc. v. John*, 892 F. Supp. 466, 475 (W.D.N.Y.); *Montana v. United States*, 450 U.S. 544 (1981).

The delicate nature of the Federal-Indian relationship further encourages deference to Indian tribal courts. *See In re Marriage of Limpy*, 195 Mont 314, 636 P.2d 266 (holding that even though the tribal court had yet to exercise jurisdiction, it had exercised jurisdiction in like cases indicating a disposition to preempt State jurisdiction, thus requiring abstention.)

i. Federal Considerations

Under *Wellman*, Petitioner has failed to assert in her *Petition for Dissolution* the Court's jurisdiction to adjudicate the distribution or valuation of Nation-Sourced Assets. Such

jurisdiction will be nearly impossible to obtain considering the likelihood of a New-York based tribe assenting to the jurisdiction of Montana so as to be in compliance with Pub. L. 280 and MCA § 2-1-302. Without such consent, this court must evaluate the *White Mountain Apache* factors to establish whether it maintains any residual interest in light of the SNI's sovereignty.

The general federal policy scheme favors a finding of SNI's jurisdiction over Scott's Nation-Sourced Assets and denying Montana's jurisdiction. First, the general construction of federal land trusts for tribal reservations supports the federal policy "of encouraging tribal self-government." *Wellman*, 258 Mont. at 140, 852 P.2d at 565 (citing *New Mexico v. Mescalero Apache Tribe* (1983), 462 U.S. 324, 335, 103 S.Ct. 2378, 2387, 76 L.Ed. 2d 611, 621,). As a brief overview of the Federal-Indian relationship, the federal policy scheme includes the Indian Civil Rights Act of 1968, the Indian Self-Determination and Education Assistance Act of 1973, and the Indian Financing Act of 1974, each of which focuses on Indian civil rights, economic vitality, and access to federal programs. For example, the Indian Reorganization Act of 1934 contemplates Native-owned businesses and the income derived from those business. *See* 25 U.S.C.A § 5101.

Second, Scott and SNI continue to use and benefit from the federal policy scheme, with his primary income is derived from GTS Enterprises. GTS was created by the merging of business partners' tobacco and gas sales operations that created a unified holding/management company to advise its subsidiaries. The business was organized under SNI laws because of sovereign protection from federal interests, which includes circumventing certain federal taxes due to its sovereign cultivation, distribution, and exportation. Scott's participation in the federal scheme and use of SNI laws is the materialization of Congress's goal for tribal self-government.

ii. Tribal Interest and State Policy

Aside from the federal consideration, there is strong tribal interest to adjudicate the matter. To be an owner in a business organized under SNI laws, the owner(s) must be a member of the tribe, which is predicated on Scott's mother's membership in the Nation. Membership provides some sovereign protections from the United States' due to its troubled history with Native American tribes. A court would have no authority to force Scott to sell an interest in his nation businesses or his nation land. That power resides with the tribal court.

For example, in *Fisher*, the Supreme Court of the United States reversed the Supreme Court of Montana when Montana held jurisdiction proper in the District Court for an adoption of a Native American child when all parties were members of the tribe. *Fisher*, 424 U.S. at 383, 96 S.Ct. at 944. At the time, the district court certified a question to the Appellate Court of the Northern Cheyenne Tribe asking whether Montana had jurisdiction pursuant to a tribal ordinance, to which the tribe responded jurisdiction remained with the tribe. *Id.* at 384.

The U.S. Supreme Court reasoned state-court jurisdiction would interfere the Northern Cheyenne Tribe's power to self-govern through its tribal court; that it would subject matters arising on the reservation among reservation Indians to a forum other than the one they established for themselves. *Id.* at 386-87. The tribe established its authority pursuant to its constitution and bylaws giving jurisdiction to such questions to its tribal court, and for the state to upset such interest would be against federal policy and general principles of comity. The Court later acknowledged the Northern Cheyenne Tribe had not availed itself to Montana's courts under Pub. L. 280 or through the Indian Civil Rights Act. *Fisher*¸ 424 U.S. at 383, 96 S.Ct. at 944.

The United State Supreme Court reaffirmed this position in *Kennerly v. Dist. Ct. of the Ninth Jud. Dist. of Mont.*, 400 U.S. 423, 91 S.Ct. 480, 27 L.Ed.2d 507 (1971). There, a non-Indian-owned grocery store located within the boundaries of the Blackfeet reservation brought suit in state court against members of the Blackfeet Indian Tribe to collect payment for food sold on credit. *Id.* 424-25, 481. The Montana Supreme Court held the state district court had concurrent jurisdiction because the debt itself was not tied to tribal rights. But, again, the U.S. Supreme Court held that absent assent to Pub. L. 280, the state could not assert civil jurisdiction over issues arising within the exterior boundaries.

Scott's request for this Court to dismiss and preclude distribution and valuation of his Nation-Sourced Assets is supported by *Fisher*. There, a child and family used a court established by their recognized tribe. Here, GTS manages business operations that are wholly organized through SNI law, and which conduct their affairs under the protection of Nation sovereignty and law. In effect, Scott's interests are "matters arising on the reservation among reservation Indians." *Id.* Peacemaker's assertion of jurisdiction nearly mirrors the language included in *Fisher*: "a member of the nation or corporate entity residing on, organized on, or doing business on any of the reservations". (emphasis omitted) Dkt. 149 p.3 ¶3.

Unlike *Kennerly*, Scott's interest in his business is directly attributed to the rights afforded by the SNI. So, even if this Court concludes Petitioner's interest in his Nation-sourced income and businesses is a tertiary matter not directly affiliated with tribal rights, the U.S. Supreme Court has shown extreme deference to tribal courts.

As discussed in the following section, Peacemaker's judgment precludes the application of § 40-4-202(1). In terms of equitably dividing the estate, this Court should act as if Scott's Nation-sourced interest does not exist. Peacemaker's Court adjudicated Petitioner's

interest in the property and found it to be nil. Without federal or state authority under P.L. 280 and Montana Code Ann. § 2-1-302 thru 306, nor an articulable interest from Petitioner warranting the invasion of sovereign authority to distribute, evaluate, or adjudicate the Nation-sourced asset, this Court should, again, swing its proverbial gavel and dismiss its Jurisdiction over Scott's Nation-Sourced Assets.

III. THE COURT MAY NOT CIRCUMVENT ITS LACK OF JURISDICTION TO EQUITABLY VALUE SCOTT'S NATION-SOURCED ASSETS PURSUANT TO § 40-4-202(1), MCA.

A court, in pursuit of equity, may acknowledge the lack of authority to distribute Nation-Sourced Assets but attempt to equitably distribute the marital estate pursuant to the assets value. Such position would be wrong. The Court may attempt to rely on *In re Funk*, where Montana, through mass excision of prior jurisprudence, said:

> The overarching premise of the statute is this: '[i]n a proceeding for dissolution of marriage ... the court ... shall ... finally equitably apportion between the parties the property and assets **belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both.**' Taken literally, this language means the court has the ultimate authority to distribute all property of both spouses; it is not required to subtract premarital assets or inheritances from the marital estate before dividing it, nor is it limited in its authority to determine how such assets are to be divided. To be sure, the statute does specify the particular matters to be considered in dividing pre-acquired, gifted or inherited property, but it nowhere provides that these 'considerations' constitute a constraint on the district court's essential mandate, which is to equitably divide all assets of the parties, however and whenever acquired.

2012 MT 14, ¶ 16, 363 Mont. 352, 270 P.3d 39. However, such statutory application relies and assumes a court has jurisdiction to make such distribution because it has jurisdiction over the marital parties and estate. The very basis of this motion argues this Court is without authority thus does not require such statutory analysis due to Peacemaker's exclusion and exclusive authority over the property.

Moreover, as articulated by the Montana Supreme Court in *Wellman*, a district court without authority to transfer title to property does not have the power to "value the marital estate and the obligation to apportion it equitably, either by awarding [ ] a monetary judgment equal to [the] equitable share of the estate or by order[ing] the land to be sold to other tribal members and the proceeds divided." *Wellman*, 258 Mont. at 138, 852 P.2d at 563. Such reasoning stems from a court's limited authority under 28 U.S.C § 1360(b) and Montana's equitable distribution approach. *Wellman*, 258 Mont. at 138-39, 852 P.2d at 563-64.

28 U.S.C. § 1360(b), in relevant parts, reserves powers not expressed in P.L. 280 to tribal courts and the federal government; nothing in the statute shall "confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein." 28 U.S.C. § 1360(b).

It is strong tribal and federal interest that underly the assertion that "§ 40-4-202(1), MCA cannot require or allow adjudication of Indian trust land by a state district court. *Wellman*, 258 Mont. at 138, 852 P.2d at 563. The court should defer to and presume that it is the tribal court that will equitably apportion the spouse's marital assets. *Wellman*, 258 Mont. at 138, 852 P.2d at 563.

In *Wellman*, the respondent appealed the court's order dismissing an action for equitable apportionment of a marital estate for lack of subject matter jurisdiction. *Id.* at 133, 560. In that case, there was over 4,000 acres of Indian trust land held by the parties during their marriage. The parties were members of the Blackfeet Reservation, and their entitlement to the land was predicated on the wife's enrollment in the tribe. *Id.* The acreage was the largest asset of the estate, and Respondent argued dissolving the marriage without equitably distributing the land would result in inequitable justice. *Id*. The District Court dismissed the action for lack of

subject matter jurisdiction because the land in question was within the jurisdiction of the tribal courts. *Id.* at 134, 561.

The Supreme Court of Montana agreed with the district court and analyzed the *White Mountain Apache* factors, concluding, just as this Court should, the State's interest is futile in comparison to the federal statutory scheme and the Sovereign respect of Indian nations. *Id.* at 140, 565. It reasoned the Blackfeet Reservation has a strong interest in safeguarding members and the beneficial rights associated with trust land. *Id.*

The respondent attempted to circumvent such argument by stating, arguendo, that no subject matter jurisdiction is required over the asset, because the court is not disposing or transferring titled to the asset; that the court only need to value the property for equitable distribution of the non-Indian estate pursuant to § 40-4-201(1) MCA. *Id.* at 138, 563. Montana's Supreme Court rejected such assertion. Although § 40-4-201 (1) states a court *shall* equitably apportion the estate, it is the tribal code that directs the equitable distribution of tribal property. *Id.*

Such explicit reasoning directly refutes Petitioner's claim that she may not be seeking an in-fact interest in the business or land, just its value for dissolution purposes. Such euphemistic loop hole, is the rejected sentiment in *Wellman*.

Scott does not disagree that much of his SNI income became a part of the marital estate. It made purchases for the parties' comfortable lifestyle, provided for their children, and continues to provide the parties' daily expenses. But, his case is so pointedly similar to *Wellman,* that a dissimilar outcome warrants immediate appeal. His business interests, and the income stream generated therefrom provided for a large portion of the marital estate, but such rights to the income were derived from his rights as an SNI member. Just as the 4,000 plus

acreage was a part of the marital estate in *Wellman* and was likely funded or maintained with marital resources, the authority to divide such property and interests resided with the tribal court.

Scott's interest in tribal land is directly synonymous with *Wellman*. He retains tens of acres within SNI's sovereignty and the land hosts his income-generating businesses. SNI's sovereignty is federally protected under the 1794 Treaty of Canandaigua, between the Six Nations and the United States. The treaty places the Aboriginal land title in restricted fee status. Such construction provides direct tax benefits and preclusion from state or federal sovereignty. To value SNI sovereign land outside the confines of this State's border, which can only be owned by recognized tribal members, encroaches on the sovereignty of the SNI—hence Peacemaker's preclusion of Brisbane Consulting Group's valuation "outside of the [SNI]" Dkt. 149 p.6 ¶5 Where *Wellman* recognized the inherent right of the tribe to adjudicate land matters, and thus their value in relation to the marital estate, so to should this Court abstain from asserting authority over matters wholly controlled and regulated by SNI courts.

Wellman's reasoning extends far beyond a court's authority when it comes to land. *Wellman* recognized "[i]ndian trust property cannot be conveyed without the consent of the Secretary of the Interior." (citing *Tooahnippah v. Hickel*, 397 U.S.598, 609, 90 S.Ct. 1316, 1323 (1970)). It concluded explicitly § 40-4-201(1), MCA "cannot be construed to require or allow adjudication," rather, the Court should presume the "[t]ribal court will equitably apportion the estate. *Wellman*, 258 Mont. at 138, 852 P.2d at 563. Peacemaker's did just that. It found Scott's Nation-Sourced Assets to be wholly his and not subject to distribution, as was consistent with its constitution, codes, and customs.

If the Court considers Scott's Nation-Sourced Assets and the future corresponding income stream, as to equitably distribute the non-native portions of the marital estate, then it is rejecting and encroaching on SNI's sovereignty and adjudication of its own interests and people.

CONCLUSION

This Court should retain jurisdiction to all non-native aspects of the dissolution, but as it pertains to Respondent's Nation-Sourced Assets, which are the product of his heritage, tribe, and the sovereignty of his nation, this Court should enforce Peacemaker's Declaratory judgment, as consistent with §26-3-205. Further, and synchronously, it should dismiss for lack of subject matter jurisdiction as it would be against state and federal precedent to assert jurisdiction over distribution of his interest in the business. Petitioner has not alleged facts or policy considerations to satisfy the burden of proof needed for this court to maintain jurisdiction. To encroach on tribal sovereignty invades the federal pursuit of tribal self-government; it would also place Scott under obligation to comply with two competing and conflicting court orders. Further, it would be beyond this Court's authority to evaluate assets pursuant to Montana law as such valuation resides with the SNI. This Court has many sound blocks with which to swing its gavel, all of which necessitate granting Scott's motion.

Attorney for Petitioner has been contacted and opposes this Motion.

WHEREFORE Scott respectfully requests this Court:

1. Enforce the Seneca Nation of Indians Peacemaker's Court Declaratory Judgment ordered on January 29, 2024, under § 26-3-205;
2. Dismiss jurisdiction to adjudicate, value, or equitably distribute Scott's Nation-Sourced Assets and corresponding income under M. R. Civ. P. 12(b)1 and (h)(3);

3. Retain jurisdiction over the parties' Non-Nation-sourced martial estate;
4. Make an order based on the motions, in lieu of hearing oral arguments on April 30, 2024, or alternatively, hear arguments regarding this Motion at that time.
5. Any and all other relief deemed just and proper.

Dated this 1st day of March, 2024

COOK | PHELAN ATTORNEYS AT LAW

By: _____
CJ Cook, Esq.
Attorney for Respondent

CERTIFICATE OF SERVICE

I, Charles J. Cook, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion to the following on 03-01-2024:

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

Caitlin Terese Pabst (Attorney)
113 E. Oak Street
Suite 2D
Bozeman MT 59715
Representing: Karen L. Maybee
Service Method: eService

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

Steven E. Goodson (Attorney)
113 E. Oak Street, Suite D
Bozeman 59715
Representing: Karen L. Maybee
Service Method: Email

Electronically signed by Shannon Norquist on behalf of Charles J. Cook
Dated: 03-01-2024