

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JAMES V. NGUYEN,

Case No. 18-CV-522 SRN/KMM

Plaintiff,
vs.

DEFENDANT AMANDA GUSTAFSON'S
MEMORANDUM OF LAW IN
SUPPORT MOTION TO DISMISS
PURSUANT TO RULE 12 (b)(3) and 12(b)(6)
FOR IMPROPER VENUE AND FOR A FAILURE TO STATE
A CLAIM UPON WHICH RELIEF CAN BE GRANTED

AMANDA G. GUSTAFSON; HENRY M.
BUFFALO, JR., in his official capacity as
Tribal Court Judge of the Shakopee
Mdewakanton Sioux Community Tribal
Court, of the Shakopee Mdewakanton
Sioux Community; THE SHAKOPEE
MDEWAKANTON SIOUX
COMMUNITY TRIBAL COURT

Defendants.

MEMORANDUM OF POINTS AND AUTHORITIES

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**I.
PRELIMINARY STATEMENT**

Defendant Amanda Gustafson makes this Federal Civil Procedure Rule (12)(b)(3) and 12(b)(6) motion to dismiss the claims of Plaintiff James Nguyen as Plaintiff has brought this action in an improper venue and he has failed to state a claim upon which relief can be granted by this Court. As an initial matter, Plaintiff requests the issuance of an injunction and declaratory judgment and by this Court based on issues arising in a divorce proceeding currently pending between Plaintiff and Defendant Gustafson in the Shakopee Mdewakanton Sioux (SMSC) Tribal Court.

This is a marriage dissolution proceeding that does not belong in federal district court for any reasons offered by Plaintiff Nguyen. Three courts with divorce jurisdiction over these parties have now considered this divorce proceeding -- including a state district court in California (Humbolt County)(Doc. No. 7-1, 7-2, and 7-3) and Minnesota (Hennepin County)(Doc. No. 7-5), and the Tribal Court of the Shakopee Mdewakanton Sioux Community (SMSC)(Doc. No. 7-6). All three courts agreed that the SMSC Tribal Court was the proper forum in which this divorce proceeding should go forward.

The matter is currently proceeding in the SMSC Tribal Court with pending motions, ongoing discovery, an order for mediation, and pretrial and trial dates scheduled for early fall of this year. (Doc. No. 24-5) The court where Plaintiff Nguyen prefers the matter go forward -- Hennepin County District Court -- has already considered all of the arguments offered by Plaintiff Nguyen to this Court as to why it should intervene and stop the SMSC Tribal Court from proceeding. The Hennepin County

District Court has declined to allow the matter to move forward in its court and deferred to the proceeding going forward in the SMSC Tribal Court. (Doc. No. 7-5).

While he claims the Exhaustion Doctrine has no place in this proceeding, Plaintiff Nguyen has attempted an interlocutory appeal to the SMSC Court of Appeals, asking that court to review the SMSC trial court's denial of his motion to dismiss for lack of personal and subject matter jurisdiction. After carefully considering the matter and soliciting briefing from both parties on the general rule of finality of orders on appeal and the specific applicability of the Collateral Orders Doctrine, the SMSC Court of Appeals found no basis for an interlocutory appeal and directed the matter to proceed forward in the SMSC trial court, with all rights for appeal preserved for Plaintiff Nguyen at the conclusion of the trial. (Doc. No. 7-9).

Contrary to the assertions of Plaintiff Nguyen, this matter as presently postured does not raise any unusual or unique federal questions that this Court must concern itself with at this juncture. Rather, this complaint for injunctive and declaratory relief, as well as the previously considered petition for a preliminary injunction against these three defendants, amounts to nothing more than a disgruntled divorce litigant unhappy with the domestic relations code provisions of the forum where the three courts, all with potential concurrent jurisdiction, ruled the matter should go forward. This effort to seek federal court relief in a tribal court divorce proceeding is nothing more than a blatant effort at forum shopping. For all of the reasons as stated below, this request for injunctive and declaratory relief should be dismissed pursuant to Rule 12 of the Federal Rules of Civil Procedure.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

The factual underpinnings of this proceeding have already been set forth in some detail by this Court in its Memorandum Opinion and Order issued in this matter on March 21, 2018, denying Plaintiff's Motion for Preliminary Injunction. The factual and procedural history of this proceeding has been set forth in even greater detail in orders issued by both the Hennepin County and the SMSC trial courts. (Doc. No. 7-5 and 7-6). Both parties have also submitted extensive affidavits in both proceedings and both parties also testified about their relationship and residential history for more than two days at the proceeding initiated by Plaintiff Nguyen in California. Both the Hennepin County and SMSC trial courts had the transcripts of that testimony available to them as they made their decisions on jurisdiction and which court should proceed to hear and resolve the marriage dissolution between these parties.

Amanda Gustafson and James Nguyen were married on June 13, 2014. They are the biological parents of one joint child who is currently three years of age. Both Ms. Gustafson and the minor child are enrolled members of the SMSC Community. While the particulars are disputed, during the course of their relationship, Mr. Nguyen and Ms. Gustafson have resided together and separately on the reservation lands of the SMSC Community, in homes in Scott County, Hennepin County, and at various locations in the state of California. Ms. Gustafson has maintained an address on the SMSC reservation during her entire adulthood and is in the process of building a home on the SMSC reservation using her long-standing land assignment. (Doc. No. 24-2).

This couple has had a long and complicated history together that began in December of 2012. It has been a volatile relationship, replete with criminal proceedings, domestic abuse proceedings, and challenges with chemical use and abuse. Ms. Gustafson has long asserted that Mr. Nguyen has wrongfully depleted and dissipated her income and assets flowing to her from her substantial per capita payments that she receives as a result of her SMSC membership. She asserts that Mr. Nguyen has repeatedly taken control of and secreted her assets through duplicitous and fraudulent means. She intends to raise all of these concerns in this divorce proceeding no matter in which jurisdiction the proceeding ultimately lands. (Doc. No. 24-2).

Prior to the beginning of the parties' relationship, Ms. Gustafson was placed under a tribal court conservatorship when she turned 18; that was closed in 2012 and reopened in April of 2014, with some instigation by Mr. Nguyen when Ms. Nguyen was pregnant with the parties' joint child. The parties were married on June 13, 2014, in Las Vegas while Ms. Gustafson was still under the tribal court conservatorship -- with the marriage occurring without the knowledge or approval of the conservator of the person. The parties' joint child was born on September 11, 2014, in Minnesota. The second conservatorship as to Ms. Gustafson closed on September 24, 2014, at the request of both parties. (Doc. No. 24-2).

Violence subsequently flared between the parties, domestic abuse petitions and criminal proceedings again went forward in Scott County District Court, and both parties commenced separate divorce proceedings: Ms. Gustafson in the SMSC Tribal Court on October 9, 2014, and Mr. Nguyen in Scott County District Court on October 16, 2014.

Both parties challenged jurisdiction in the other court. In December of 2014, the SMSC Child Welfare Office commenced a child welfare proceeding in the SMSC Tribal Court based on concerns about the welfare of the parties' child. While those matters all were going forward in both Scott County and the SMSC Tribal Court, the parties reconciled and a global settlement was reached on all pending matters in June and July of 2015. An outstanding order for protection in Scott County was dismissed, both parties withdrew their divorce petitions, and the child welfare matter was closed. The order closing the child welfare matter contains this standard provision found in all SMSC Tribal Court orders closing a tribal child welfare matter: "That this matter shall be closed, but that [the parties' minor child] shall remain a ward of this Court pursuant to the provisions of the Indian Child Welfare Act, 25 U.S.C. § 1911(a)." This provision is routinely added to tribal court orders in child welfare matters so that in the event a future child welfare proceeding is commenced in a state court, the state child protection agency will be notified of ongoing child welfare jurisdiction as to the subject child in tribal court. (Doc. No. 24-2).

The parties apparently went on with their lives as a married couple with their joint child until late spring or early summer of 2017 when things again became volatile and Mr. Nguyen commenced divorce and custody proceedings in California on June 29, 2017. (Doc. No. 7-1). The circumstances leading to the divorce being commenced in California and the parties' child traveling to California to be with Mr. Nguyen at the start of that proceeding are significantly disputed between the parties. (Doc. No. 24-2). In any event, on June 29, 2017, James Nguyen commenced a marriage dissolution proceeding in

the state of California. The California court in Humboldt County issued an ex parte temporary emergency custody order limiting Amanda Gustafson's access to the parties' minor child until further order of the Court and setting the matter on for an evidentiary hearing. An evidentiary hearing was conducted by the California court on July 27 and 28, 2017. (Doc. No. 24-4).

Prior to the commencement of that evidentiary hearing in California, Ms. Gustafson commenced her own marriage dissolution proceeding by filing a petition in the SMSC Tribal Court on July 20, 2017. (Doc. No. 7-2). She had Mr. Nguyen personally served with the petition in California on July 27, 2017. Ms. Gustafson has always maintained a home and address on the reservation lands of the SMSC Community, and despite also having homes at various times off the reservation in Minnesota and in California, she has always considered the SMSC reservation to be her primary place of residence. (Doc. No. 24-2).

Ms. Gustafson secured California counsel and at the evidentiary hearing she challenged the California divorce proceeding on both forum inconvenience and lack of subject matter jurisdiction under the UCCJEA. (Doc. No. 24-2). The UCCJEA is a uniform law enacted in nearly all states that provides a mechanism for determining subject matter jurisdiction for custody proceedings of minor children when more than one jurisdiction has a possible claim to such jurisdiction; the UCCJEA analysis focuses on the determination of a child's "Home State," defined in the statute as "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding." Minn. Stat. §

518D.102(h). Ms. Gustafson alleged that the parties' minor child was primarily a resident of Minnesota and had been wrongfully removed to the state of California without her consent. She further asserted that California was not the Home State of the child as defined by the UCCJEA, but rather it was Minnesota, and more particularly, the SMSC Community.

After the two day evidentiary hearing in which the California court heard substantial testimony as to the relationship and residential history of the parties, the California court agreed with Ms. Gustafson's assertions and declined to exercise jurisdiction over the minor child and the marriage dissolution. The California court also stayed the California proceedings until August 10, 2017, so that Ms. Gustafson could request that the SMSC Tribal Court exercise jurisdiction over all matters in dispute, issue a temporary order before the parties were scheduled to return to the California court on August 10, 2017, and directing that the minor child be returned to Minnesota. The California court indicated that upon receipt of such an order from the SMSC Tribal Court, Mr. Nguyen's California Petition for Dissolution of Marriage would be dismissed and the matter would be sent to Minnesota for further proceedings. The operative language in that order provided the following: "Further proceedings in this action are stayed pending orders of the Shakopee Mdewakanton Sioux Community Tribal Court or other court with jurisdiction over [the minor child] pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act." In a subsequent order, the California court dismissed not just the custody issues in the proceeding, but the entire divorce petition filed by Mr. Nguyen in California. (Doc. No. 7-3).

In an effort to secure the tribal court order as requested by the California court, Ms. Gustafson's Minnesota counsel provided the SMSC Tribal Court with a proposed temporary order, notified the SMSC Tribal Court that Attorney Adam Blahnik had indicated he would be representing Mr. Nguyen if the matter was returned to Minnesota, spoke with Mr. Blahnik of his intentions to approach the SMSC Tribal Court for relief, copied Mr. Blahnik with the communications with the SMSC Tribal Court, and also made arrangements for the SMSC Tribal Court to receive copies of the transcripts of the California evidentiary hearing and certified copies of the California orders. Judge Buffalo signed and filed his Temporary Order on August 7, 2017, in which he confirmed that Ms. Gustafson had commenced a divorce proceeding in Tribal Court, and that the Tribal Court was assuming, at least temporarily, both personal and subject matter jurisdiction over the minor child and both parents and the entire divorce proceeding. The Tribal Court also retained the same temporary custody and parenting time schedule as the California court had put in place. The Tribal Court directed the parties to confer to determine a date and time for an initial hearing to address temporary issues. (Doc. No. 24-2).

Rather than confer with opposing counsel on temporary issues, Mr. Nguyen served and filed a divorce petition in Hennepin County District Court on August 18, 2017. (Doc. No. 7-4). He also filed an answer to the Tribal Court petition, challenging that Court's personal and subject matter jurisdiction over the parties and their child. He scheduled a motion before Judge Buffalo to ask that the Tribal Court proceeding be dismissed so as to allow the Hennepin County proceeding to go forward on its merits on

all issues in dispute between the parties. While that motion was being briefed and considered by the Tribal Court, Ms. Gustafson filed a motion in Hennepin County asking that court to stay any consideration of its jurisdiction until after the Tribal Court determined if it has jurisdiction. (Doc. No. 24-1).

On November 10, 2017, Judge Buffalo issued a forty-eight page Memorandum Opinion and Order (Doc. No. 7-6), concluding that his court had subject matter jurisdiction to decide the dissolution matter, that his court had personal jurisdiction over Plaintiff Nguyen, and that his court had a substantial interest in continuing to exercise its jurisdiction over this matter and these parties. Judge Christian Sande of the Hennepin County District Court, after reviewing Judge Buffalo's decision and the extensive briefing by the parties in his proceeding (Doc. No. 24-1), issued an order on January 9, 2018, granting Ms. Gustafson's motion for stay pending resolution of the dissolution proceeding in the SMSC Tribal Court. Judge Sande attached to his order a copy of Judge Buffalo's forty-eight page Memorandum Opinion and Order (Doc. No. 7-6).

Plaintiff Nguyen then commenced an interlocutory appeal of Judge Buffalo's jurisdictional decision to the SMSC Court of Appeals. In his pleadings with this Court, Plaintiff Nguyen asserts some form of procedural nefariousness by the SMSC courts in how this attempted appeal was handled. Nothing of the like occurred. Mr. Nguyen filed his Notice of Appeal with the SMSC Court of Appeals on December 4, 2017, and on December 8, 2017, he filed a Notice of Basis of Appeal and Request for Stay of Proceeding with the trial court, a copy of which was also provided to the SMSC Court of Appeals. In this document, Mr. Nguyen contended that interlocutory appeal was

appropriate under the Collateral Order Doctrine, and that if the trial court found that doctrine inapplicable, he requested that the trial court should certify the jurisdictional questions for appeal before it proceeded to trial on the merits. (Doc. No. 7-6).

In response to that notice from Mr. Nguyen, the SMSC appellate court issued an order on December 11, 2017, simply indicating that requests for stays and certification must first be considered by the trial court, but that the parties should brief the issue of whether an interlocutory appeal was proper under the Collateral Order doctrine. Judge Buffalo, responding to the same Notice of Basis of Appeal and Request for Stay, issued an order on the same day as the appellate court, finding the order denying Mr. Nguyen's motion to dismiss was not a Collateral Order for purposes of interlocutory appeal, the jurisdictional dispute did not meet the standard for certification, and that there was no basis for a stay. (Doc. No. 7-8). These orders were both appropriate in terms of scope and timing.

On January 30, 2018, the SMSC Court of Appeals issued an order affirming Judge Buffalo's decision finding that the denial of the motion to dismiss was not a Collateral Order subject to interlocutory appeal, that there was no basis for certification of the question to the SMSC Court of Appeals, and that the denial of the stay was appropriate. (Doc. No. 7-9). The appeal was dismissed without prejudice as procedurally premature. Judge Buffalo then scheduled a hearing and issued a scheduling order, directing that the divorce go forward in the SMSC Tribal Court on all issues, with pretrial and trial dates schedule for early fall 2018. (Doc. No. 24-5).

On February 26, 2018, Plaintiff Nguyen commenced an action in this Court seeking a declaratory judgment indicating that Judge Buffalo and the SMSC Tribal Court have no personal or subject matter jurisdiction over these parties and this divorce action. He also sought a preliminary injunction prohibiting Judge Buffalo, the SMSC Tribal Court, and Defendant Gustafson from prosecuting Ms. Gustafson's divorce petition in the SMSC Tribal Court and thereby allowing the dissolution proceeding to proceed in Hennepin County District Court. That motion for emergency and extraordinary relief was heard by this Court on March 16, 2018, and a Memorandum Opinion and Order was issued on March 21, 2018, denying Plaintiff's Motion for Preliminary Injunction. (Doc. No. 29).

This Memorandum shall address Defendant Gustafson's request that Plaintiff Nguyen's Complaint for Injunctive and Declaratory Relief be dismissed under Rule 12 of the Federal Rules of Civil Procedure for improper venue and failure to state a claim upon which relief can be granted.

III. LEGAL ARGUMENT

A. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED PURSUANT TO FED. R. CIV. P. 12 (B) (3) DUE TO ITS BEING IMPROPERLY VENUED AND UNDER THE ABSTENTION DOCTRINE.

If venue is improper in the district court where the action was filed, the Court may, within its discretion under 28 U.S.C. § 1406(a) (2012), dismiss the action or transfer the action to any district in which it can be brought to promote the interests of justice. The standard for reviewing a motion to dismiss under Fed. R. Civ. P. 12 (b) requires that a

complaint must contain, “enough facts to state a claim to relief that is plausible on its face.” Bell Corp. v. Twombly, 55 U.S. 544, 127 (2007).

An initial comment is in order as to the peculiar nature of the relief being requested by the Plaintiff: a declaratory judgment and an injunction. In another dispute involving a contested custody proceeding between tribal member and non-tribal member parents where state and tribal courts were both involved, a party to that proceeding attempted to obtain a declaratory judgment in federal court as a way to resolve that jurisdictional dispute between the state and tribal courts. The Ninth Circuit Court of Appeals stated that “[a] federal court declaratory judgment is simply not the proper means to untangle this jurisdictional knot.” Confederated Tribes of the Colville Reservation v. Superior Court of Okanogan County, 945 F.2d 1138, 1141 (9th Cir. 1991). That Court went on to state that basically it was up to the competing state and tribal courts to sort out those issues, that indeed they are entitled to carefully consider and analyze those issues, and once the issues reached the highest courts in each court system, the parties might then be in a position to go into federal court -- but only in the United States Supreme Court on appeal or by writ of certiorari. Id. Finally, the 9th Circuit then stated “[i]t is well-established that declaratory judgments cannot fill in for appeals, let alone substitute for an appeal when no appeal could be taken.” 945 F.2d at 1142. Clearly, this is not the proper venue for the relief which Defendant Nguyen seeks through his complaint filed with this Court.

Furthermore, in addition to questioning whether requests for declaratory judgments and injunctions are the best means to resolving jurisdictional disputes, it is

also worth considering whether it is appropriate for this federal court to consider the jurisdictional aspects of this divorce proceeding in light of the long-standing Abstention Doctrine that exists for domestic relations matters in federal courts. The leading and most widely cited United States Supreme Court case discussing the history of the Abstention Doctrine in the domestic relations context is Ankenbrandt v. Richards, 504 U.S. 689 (1992). While exceptions, such as various enforcement issues and interspousal torts, have carved away some aspects of the general rule, it remains the law of federal court jurisprudence that, in general, federal courts will abstain from entering into domestic relations matters and leave those substantive disputes to the province of the state courts. Presumably, that same axiom would apply to tribal courts with domestic relations jurisdiction that are handling the same substantive family law matters as the state courts.

Plaintiff Nguyen has provided no legal authority for the proposition that a jurisdictional dispute in a domestic relations matter provides a recognized exception to the Abstention Doctrine being applied to these kinds of disputes. In the case at hand, the underlying grievance of the moving party is that he is dismayed at being subjected to substantive family law provisions that differ from the jurisdiction he prefers. While Plaintiff Nguyen couches his concern in terms of jurisdiction, he is clear that he does not want the substantive laws of the SMSC Tribal Court's Domestic Relations Code to apply to him, and he would prefer what he considers to be the more favorable laws of the state of Minnesota.

Nor is this a situation where competing courts with concurrent jurisdiction have refused to resolve the priority of consideration between the two courts and where both courts are either on the path to issuing, or have already issued, contradictory divorce decrees. Such a situation that could result in parallel ongoing proceedings and potential contradictory outcomes would possibly support a federal court entering into the thicket of domestic relations law to resolve such a conflict of outcomes -- perhaps similar to a diversity jurisdiction claim -- but such is clearly not the situation in the case at hand.

Again, this case is really about the factual underpinnings of Ms. Gustafson's residency circumstances so as to create subject matter jurisdiction in the tribal court and the level of Mr. Nguyen's contacts with the SMSC Community so as to create either general or specific personal jurisdiction. Both Judge Sande and Judge Buffalo considered identical evidentiary records that included sworn affidavits generated by both parties in the Hennepin County and SMSC Tribal Court proceedings and transcripts of extensive testimony offered by both parties in the California proceeding. Both courts also considered the legal arguments against subject matter jurisdiction in the SMSC Tribal Court proffered by Mr. Nguyen.¹ After a detailed review by both the Hennepin County court and the SMSC Tribal Court of the same personal and subject matter theories, each court reached the same conclusion: the matter could and should proceed in the SMSC Tribal Court. None of the arguments now being offered by Mr. Nguyen create an

¹ It is worth noting that Mr. Nguyen's theories regarding the problems with jurisdiction in this matter have changed over time, with initial arguments leading to Judge Buffalo's order denying the motion to dismiss being based extensively on the Indian Child Welfare Act and Public Law 280, and by the time that matter reached this Court, those arguments were jettisoned completely in favor of a focus on the two Montana exceptions allowing tribal jurisdiction over non-Indian parties.

exception to the long-standing Abstention Doctrine as applied to domestic relations matters and this Court should carefully consider the implications of disregarding that long-recognized doctrine before proceeding further with this matter.

Ultimately, after a trial in the SMSC Tribal Court, Defendant Nguyen would have the right to appeal any decision from that Court, including not only substantive decisions, but jurisdictional decisions. In the event he were to prevail as to his jurisdictional claims, he has a state district court -- the family court of Hennepin County -- waiting in the wings through an order staying its divorce proceeding while matters go forward in the SMSC Tribal Court. This reality further supports a dismissal by this Court on both improper venue and the Abstention Doctrine. This is simply not the proper Court for this matter to go forward in.

**B. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED PURSUANT TO
FED. R. CIV. P. 12 (B) (6) DUE TO ITS FAILING TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED.**

The Plaintiff's Complaint seeking a declaratory judgment that the SMSC Tribal Court is without both personal and subject matter jurisdiction to hear these parties' divorce proceeding and the request for injunctive relief fails to state a claim upon which relief can be granted. Defendant Nguyen has failed to exhaust his tribal court remedies before coming to this Court. Under Rule 12(b)(6), "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

It is now clear beyond dispute that when faced with a question of determining jurisdictional requirements of a Tribal Court, those matters are generally initially ruled upon by the Tribal Court itself. National Farmers Union Insurance Cos. v. Crow Tribe, 471 U.S. 845 (1985). This rule extends to jurisdictional questions involving non-member individuals of the Tribe whose jurisdiction is being challenged, and when presented with those challenges, a district court's review of the matter should be deferred until such time as a Tribal Court has had the opportunity to address the matter before it as, "tribal authority over the activities of non-Indians on-reservation lands is an important part of tribal sovereignty." Iowa Mutual Insurance Co. v. LaPlante, 480 U.S. 9, 18 (1987). This requirement provides the basis for Defendant's request for a denial of Plaintiff's Complaint until such time as Plaintiff has exhausted their remedies before the SMSC Tribal Court.

Tribes generally have the right to regulate their own internal affairs. As stated in Santa Clara Pueblo v. Martinez, 436 U.S. 49, 55-56 (1976), "[Indians] remain a separate people, with the power of regulating their internal and social relations. They have the power to make their own substantive laws in internal matters and to enforce that law in their own forums". Tribes also generally have the right to exert authority over non-members pursuant to Montana v. United States, 450 U.S. 544 (1981), provided those non-members have entered into a consensual relationship with the tribe, or its members, and the subject matter of the laws that are in question pertain to that consensual relationship. Montana provides additional authority for the Tribe to exert jurisdiction, through its civil authority over non-members, when the conduct of the non-member, "threatens or has

some direct effect on the political integrity, the economic security, or health or welfare of the tribe.” Id. at 566.

Plaintiff’s Complaint also directly implicates the second Montana allowance in that his underlying requests to this Court challenge the very nature of the laws that he believes the SMSC Tribal Court would apply in his case. By making that challenge, Plaintiff has directly tied his request for relief to the Shakopee Mdewakanton Sioux Communities’ political integrity, economic security, or health and welfare. This also creates the grounds upon which the SMSC Tribal Court can exert jurisdiction over Plaintiff, a non-member, for purposes of hearing the dissolution proceeding brought by Defendant against Plaintiff in SMSC Tribal Court. Because grounds exist for the SMSC Tribal Court to exert jurisdiction over the dissolution proceeding pending before it between the parties, this Court should defer ruling on Plaintiff’s Complaint until such time as Plaintiff has exhausted all of her remedies before the SMSC Tribal Court.

National Farmers Union Insurance Cos. v. Crow Tribe, 471 U.S. 845 (1985) and Iowa Mutual Insurance Co. v. LaPlante, 480 U.S. 9 (1987) both set forth the clear principle that when issues of jurisdiction lie as the basis for a proceeding brought in district court, then the tribal court in question should be given the first opportunity to weigh in on those arguments. This will allow, “the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge” which will foster “the orderly administration of justice in federal court...by allowing a full record to be developed in the Tribal Court before either the merits or any question

concerning appropriate relief is addressed.” National Farmers Union Insurance Cos., v. Crow Tribe at 855-56.

This principle was further expanded upon within Iowa Mutual Insurance Co. v. LaPlante, 480 U.S. 9, 16 (1987) when it held that, “unconditional access to the federal forum would place it in direct competition with the tribal courts, thereby impairing the latter’s authority over reservation affairs.” Iowa Mutual went on to say that such access to federal courts was also counter to the principle that, “[t]ribal authority over the activities of non-Indians on-reservation lands is an important part of tribal sovereignty” and that “[c]ivil jurisdiction over such activity presumptively lies in tribal courts unless affirmatively limited by a specific treaty provision or federal statute.” Id. at 18. This approach of deferring review of matters implicating tribal jurisdiction, and requiring litigants to exhaust their tribal court remedies prior to seeking federal relief, “precludes re-litigation of issues raised by the [tribal court plaintiff’s] bad-faith claim and resolved in the Tribal Courts.” Id. at 20 n.14.

The holdings of both National Farmers Union and Iowa Mutual have been incorporated by the Eighth Circuit’s analysis as contained in Duncan Energy Co. v. Three Affiliated Tribes, 27 F.3d 1294 (8th Cir. 1994) where it was held that an exhaustion of tribal court procedures was mandatory when the matter in question involved, “questions of Tribal Law and jurisdiction.” Id. at 1300. See also United States ex rel. Kishell v. Turtle Mountain Housing Authority, 816 F.2d 1273 (8th Cir. 1987) (Estate of member of Indian tribe was required to exhaust available tribal court remedies prior to bringing federal action.)

There are exceptions to the general principles outlined in both National Farmers Union and Iowa Mutual in so much as deferral by a federal court and requiring a plaintiff to exhaust their tribal court remedies need not occur, “where assertion of tribal jurisdiction ‘is motivated by a desire to harass or is conducted in bad faith,’... or where the action is patently violative of express jurisdictional prohibitions, or where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court’s jurisdiction.” National Farmers Union Insurance Cos. v. Crow Tribe, 471 U.S. 845, 856 n.21 (1985).

It is appropriate under both National Farmers Union and Iowa Mutual for Plaintiff’s Complaint to be dismissed in its entirety because none of the exceptions to the general rule requiring abstention by federal courts from hearing matters involving questions of tribal court jurisdiction until such time as the remedies available to the parties in tribal court have been exhausted exists. This conclusion is further supported by the fact that in the present case, Plaintiff has not made any showing of a need for the implementation of an “extraordinary” and “drastic” remedy that would justify the use of injunctive relief. Plaintiff has not asserted any credible harm that will arise to Plaintiff by presenting these arguments to the SMSC Tribal Court, and in fact, Plaintiff has offered these very same arguments to that Court for it to review. Also, Plaintiff’s claim for injunctive relief is not presented as an independent claim for relief, but is derivative of the other counts of the complaint, and as such fails to state a cognizable legal basis for relief. As such, it is also appropriate for Plaintiff’s request for injunctive relief to be denied, and respect the SMSC Tribal Court’s right to rule on the merits of the arguments before it.

This Court has already reached this same conclusion as to exhaustion in its Memorandum Opinion and Order entered in this matter on March 21, 2018 (Doc. No. 29). This Court found that Plaintiff Nguyen has not currently exhausted his remedies in Tribal Court. It also found none of the exceptions to this exhaustion requirement to apply to this matter. Ultimately, this Court found that Defendant Nguyen may appeal any final judgment of the Tribal Court to the Tribal Court of Appeals. A fulsome record will best inform the Tribal Court of Appeals of the facts necessary for the determination of a jurisdictional appeal. (Doc. No. 29 at 10). Because he has failed to exhaust tribal court remedies, this Court should dismiss Defendant Nguyen's complaint for failure to state a claim upon which relief can be granted.

CONCLUSION

This Court should abstain from ruling in this matter because the issues raised are not properly before this Court and the parties have not had the opportunity to exhaust all remedies in the tribal and Hennepin County courts, and thus, this Court should dismiss the Plaintiff's Complaint for failure to state a claim for which relief can be granted.

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Dated: 04/02/18

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