UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

METROPOLITAN LIFE INSURANCE COMPANY and TRINET HR XI, Inc., Plaintiffs, v. DURIN MUNDAHL, Individually, and as the Personal Representative of the Estate of Joye M. Braun, and MORGAN BRINGS PLENTY, Individually, Defendants.	Civ. No.:24-cv-3029 **DEFENDANTS' DURIN MUNDAHL, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOYE M. BRAUN, AND MORGAN BRINGS PLENTY'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

COME NOW, Defendants Durin Mundahl, Morgan Brings Plenty and the Estate, by and through their counsel of record, Robin Zephier, and, pursuant to principles of equity and F.R.C.P. 65, Local Rules of Civil Practice 7B., and 65.1, respectively, these Defendants submit their joint Response in Opposition to Plaintiff's Motion for Preliminary Injunction (Doc. #13), and in support of Defendants' separate joint Motion to Stay, and state the following:

NATURE OF CASE

The case before the court examines the effect of a joint enterprise which aggressively solicits life/disability insurance products to employed members of a federally recognized native American tribe, who live and work on a reservation at the time of solicitation, contracting, payment of monthly premiums, naming beneficiaries, and claim presentation, but which both Plaintiffs seek the putative safe harbor of the federal court system from and against the compelling jurisdiction of the tribal court system over inequitable wrongs committed against tribal members by non-

members on the reservation, which were meant to protect them from such harm. The Defendants submit that, as members of the Cheyenne River Sioux Tribe, along with their deceased mother, they collectively possessed, to the present, the superior equities over the Plaintiffs.

The present case originates from a November 2024 civil action filed in the Cheyenne River Sioux Tribal Civil Superior Court involving a dispute over the alleged wrongful payment of a $40,000 life benefit (as well as denial of other first party contractual insurance benefits) under the MetLife insurance policy. The Plaintiffs in this federal action are TriNet HR XI, Inc., the Plan Sponsor of a Benefit Plan (Complaint¶10), issued to insured employees of the Indigenous Environmental Network ("IEN"), Decedent's employer at the time, and co-Plaintiff MetLife, the claims handlers and insurer of life/disability insurance benefits under the Plan solicited/marketed/advertised/sold to IEN's employees. (Complaint ¶13).The coverage and policy/plan was delivered to Decedent via her computer at her home on the reservation in 2022. It is noteworthy that the Plaintiffs expressly provided that, "[v]oluntary benefit plans are offered by AFLAC or MetLife and are not ERISA-covered group health insurance plans. Enrollment is completely voluntary."

Beginning in early 2022, Joye Braun was hired as full-time IEN employee, based exclusively on the Cheyenne River Sioux Reservation[1] in Dewey County, South Dakota. She

[1] "The Cheyenne River Indian Reservation is part of what remains of the Great Sioux Reservation, a single reservation created by the 1868 Treaty of Fort Laramie and covering parts of six states….In South Dakota, five separate Reservations remain of the Great Sioux Reservation—the Pine Ridge Indian Reservation, the Rosebud Sioux Indian Reservation, the Lower Brule Indian Reservation, the Standing Rock Indian Reservation, and the Cheyenne River Indian Reservation…According to the United States Census Bureau, of the poorest eleven counties in the United States based on per capita income, five of them are in South Dakota and correspond with Indian Reservations. Of those, the two counties that comprise the Cheyenne River Indian Reservation—Ziebach County and Dewey County—are the fourth and seventh poorest counties in the United States on a per capita income basis."

principally worked via computer for IEN from her residence on the Cheyenne River Reservation, where she was an enrolled member of the Tribe. Ms. Braun, who passed away on November 13, 2022, received via email to her personal computer at home on the reservation, from Plaintiffs, benefit information concerning MetLife life insurance. Plaintiff MetLife supplied, *inter alia*, a $40,000 life insurance benefit (at least, but Claimants sought additional coverage benefit payment as well) for which the decedent paid a monthly premium.

The decedent was married to Floyd Braun, a resident of the State of Washington, who was not a member of the Cheyenne River Tribe or any other tribe. While employed by IEN, in late October 2022, the decedent caused a Cheyenne River Sioux Tribal Court divorce filing to be made and served upon Mr. Braun. Around the time of the formal divorce filing, the decedent decided to check on the status of her MetLife policy coverages, and sought to affirm/re-register her sole named beneficiaries under the Metlife policy/plan, as her natural children, co-Defendants Durin Mandahl and Morgan Brings Plenty.

Both the IEN Plan Summary and the IEN Benefits Plan permitted an insured to change beneficiaries "at any time." Furthermore, the Plan represented that, "[w]hen We receive the [beneficiary] change, it will take effect as of the date You Signed it." After the Tribal divorce filing, the decedent executed an email 'change of beneficiary' using online forms supplied to her by the Plaintiffs. The decedent directed Plaintiffs to acknowledge/affirm/change both the MetLife life and AD&D insurance coverages to now be allocated 50% to each of the Defendants.

By email dated November 4, 2022, the Plaintiffs acknowledged to decedent's IEN work email, the named beneficiary acknowledgment the Decedent requested over the internet, to the

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(*FTC v. Payday Financial, LLC*, 935 F.Supp.2d 926, 930 (U.S.D.C. D.S.D. C.D., 2013; The Hon. Roberto A. Lange, J.)

MetLife policy benefits. The Plaintiffs provided an "Open Enrollment Confirmation," expressly recognizing that the beneficiary 'change' had been made to decedent's MetLife life insurance policy. Yet, when decedent passed away on November 13, 2022, and Defendant Mundahl, the judicially appointed estate representative, made a claim for the proceeds of the life insurance and other policy benefits, he was met with denial by the Plaintiffs. Plaintiffs rejected Defendants' policy claim, arguing that the decedent's beneficiary 'change' was not effective until the beginning of the calendar year, notwithstanding the express terms of the Plan Summary, the Plan terms, and decedent's otherwise timely and specific intent to affirm/ 'change' the named beneficiary, before her death and Plaintiffs' written confirmation and specific recognition of her directives.

On November 6, 2024, the Defendants initiated a five–count civil complaint against the Plaintiffs in the Cheyenne River Sioux Tribal Court for breach of contract, bad faith, punitive damages, fraud/conspiracy and a declaratory judgment, and served the Plaintiffs. Plaintiffs moved to dismiss that action, and denied any discovery to Mundahl.

In response, the Plaintiffs initiated this action on December 20, 2024 (Doc. # 1). Later on June 3, 2025, the Plaintiffs filed a motion for preliminary injunction. (Doc. #13). The Defendants' opposition to the request for injunctive relief follows below.

STANDARD OF REVIEW

I. Tribal Jurisdiction - Comity

A. Tribal Jurisdiction over Nonmembers Through *Montana*

Federal Court Judge Lange's analysis of Cheyenne River Tribal Court jurisdiction in the 2013 case of *F.T.C. v Payday Financial, LLC*, 935 F.Supp.2d 926, (U.S.D.C. D.S.D. C.D. 2013), succinctly states the legal basis for the tribal jurisdiction of the Cheyenne River Sioux Tribal Court in this dispute. Judge Lange stated therein, in part,

"The Supreme Court long has recognized Indian tribes as "distinct, independent political communities." *Worcester v. Georgia,* 31 U.S. (6 Pet.) 515, 559, 8 L.Ed. 483 (1832). Indian tribes retain a sovereignty of…self-governance over tribal members within the boundaries of the tribes' reservation lands. *United States v. Mazurie,* 419 U.S. 544, 557, 95 S.Ct. 710, 42 L.Ed.2d 706 (1975). After all, tribes had dominion over this Continent prior to settlement of Europeans and expansion of these settlements. When a tribe's jurisdiction "is not specifically authorized by federal statute or treaty, a tribe's adjudicatory authority must stem from its 'retained or inherent sovereignty.' " *Attorney's Process & Investigation Serv., Inc. v. Sac & Fox Tribe,* 609 F.3d 927, 934 (8th Cir.2010) (hereinafter "*Attorney's Process One* ") (quoting *Atkinson Trading Co., Inc. v. Shirley,* 532 U.S. 645, 649–50, 121 S.Ct. 1825, 149 L.Ed.2d 889 (2001)). The extent to which tribes retain or possess adjudicatory authority has been defined primarily by judicial decisions. *Id.* (citing Felix Cohen, *Cohen's Handbook of Federal Indian Law,* § 7.01 (5th ed. 2005)). "Whether a tribal court has authority to adjudicate claims against a nonmember is a federal question within the jurisdiction of the federal courts." *Id.*

Indian tribes generally lack legal authority over people who are not tribal members. *Plains Commerce Bank v. Long Family Land & Cattle Co.,* 554 U.S. 316, 328, 128 S.Ct. 2709, 171 L.Ed.2d 457 (2008). The decision that the Supreme Court has described as "pathmaking" in defining tribal legal authority over non-Indians is *Montana v. United States,* 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981). *See Strate,* 520 U.S. at 445, 117 S.Ct. 1404. In *Montana,* the Supreme Court recognized that "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." *Montana,* 450 U.S. at 565, 101 S.Ct. 1245. The Court in *Montana* then recognized two exceptions to this general principle under which tribes may exercise "civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands." *Id.; see also Plains Commerce Bank,* 554 U.S. at 329, 128 S.Ct. 2709. Because *Montana* involved a question of the extent of tribal regulatory authority, the Court in *Montana* phrased the two exceptions as follows:

> A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.
> *Montana,* 450 U.S. at 565–66, 101 S.Ct. 1245 (internal citations).

The Supreme Court has employed the *Montana* exceptions in determining whether a tribal court has adjudicatory jurisdiction over non-

> Indians. *See Strate,* 520 U.S. at 438, 117 S.Ct. 1404. In *Strate,* a case involving the jurisdiction of a tribal court over personal injury actions against non-Indian defendants, the Court summarized the principles of the *Montana* decision as they relate to tribal court jurisdiction as follows:
>
> > *Montana* thus described a general rule that, absent a different congressional direction, Indian tribes lack civil authority over the conduct of nonmembers on non-Indian land within a reservation, subject to two exceptions: The first exception relates to nonmembers who enter consensual relationships with the tribe or its members; the second concerns activity that directly affects the tribe's political integrity, economic security, health, or welfare.
>
> *Id.* at 446, 117 S.Ct. 1404. " 'If the Tribe retains the power under *Montana* to regulate [nonmember] conduct,' it makes no 'difference whether it does so through precisely tailored regulations or through' litigation in tribal court." *Fox Drywall & Plastering, Inc. v. Sioux Falls Const. Co.,* No. 12–4026, 2012 WL 1457183, at *7 (D.S.D. April 26, 2012) (quoting *Attorney's Process One,* 609 F.3d at 938)."

F.T.C., *Id*., at 932-933. *See also Plains Commerce Bank v Long Family Land & Cattle, I*nc., 554 U.S. 316, 128 S.Ct. 2709, 171 L.Ed.2d 457 (2008).

B. Tribal Exhaustion Doctrine

This Court has previously held that the "tribal exhaustion doctrine recognizes that tribal courts are an important part of tribal sovereignty and self-determination." *Nygaard v. Taylor*, 563 F.Supp.3d 992, 1015-16 (U.S.D.C. D.S.D. C.D., Lange, J.), citing *Iowa Mut. Ins. v. LaPlante*, 480 U.S. 9, 14–18, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987); *Nat'l Farmers Union Ins. v. Crow Tribe of Indian*s, 471 U.S. 845, 856, 105 S. Ct. 2447, 85 L.Ed.2d 818 (1985); *Ninigret Dev. Corp. v. Narrsgansett Indian Wetuomuck Hous. Auth*., 207 F.3d 12, 33 (1st Cir. 2000) (explaining that the concern for tribal sovereignty 'forms the epicenter of the tribal exhaustion doctrine'); *Kerr-McGee Corp. v Farley*, 115 F.3d 1498, 1507 ('The tribal exhaustion requirement created by *National Farmers* is based on comity concerns for Indian tribes in maintaining their remaining sovereignty.')." "This doctrine requires litigants, in certain circumstances, to exhaust their

remedies in tribal court before coming to federal court." *Iowa Mut. Ins. v LaPlante*, 480 U.S. 9, 16-18, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987); *DISH Network Serv. LLC v. Laducer*, 725 F.3d 877, 882–83 (8th Cir. 2013). "The doctrine thus allows tribal courts to assert authority over reservation affairs without having to 'compete' against federal courts for the right to do so." *Iowa Mut. Ins.*, 480 U.S. at 16; *Duncan Energy Co. v. Three Affiliated Tribes of Ft. Berthold Reservatio*n, 27 F.3d 1294, 1299 (8th Cir. 1994).

II. Equitable Jurisdiction of the Federal Courts

A. Equity

The United States Supreme Court recently observed that requests for injunctive relief are inherently equitable in nature. It stated,

> "The Judiciary Act of 1789 endowed federal courts with jurisdiction over 'all suits ... in equity,' § 11, 1 Stat. 78, and still today, this statute 'is what authorizes the federal courts to issue equitable remedies,' S. Bray & E. Sherwin, Remedies 442 (4th ed. 2024). Though flexible, this equitable authority is not freewheeling. We have held that the statutory grant encompasses only those sorts of equitable remedies 'traditionally accorded by courts of equity' at our country's inception. *Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319, 119 S.Ct. 1961, 144 L.Ed.2d 319 (1999); see also, *e.g.*, *Payne v. Hook*, 7 Wall. 425, 430, 19 L.Ed. 260 (1869) ('The equity jurisdiction conferred on the Federal courts is the same that the High Court of Chancery in England possesses')." *Id*., *Slip. Op.* at 6.

Trump v. CASA, Inc., 606 U.S. ___, ___ S.Ct. ___, 2025 WL 1773631 (June 27, 2025) * 6. In short, "[t]he essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case." *Trump*, *Id*. at 12, quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329, 64 S.Ct. 587, 88 L.Ed. 754 (1944).

However, "any relief must fall within traditional limits on a court's equitable powers. See *ante,* at ——– – ——– (citing *Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319, 119 S.Ct. 1961, 144 L.Ed.2d 319 (1999); *Payne v. Hook*, 7 Wall. 425, 430, 19 L.Ed. 260 (1869)). Courts must ask whether the relief plaintiffs seek "was traditionally accorded by

courts of equity." *Grupo Mexicano*, 527 U.S. at 319, 119 S.Ct. 1961. And, they must ensure that any injunctions comport with both the complete-relief principle and other "principles of equity." *Ante,* at ——. For example, courts may need to weigh considerations such as equity's concern "with justice ... also for the defendant." (citations omitted). *Trump, Id., at 16* (*Thomas, concurring*).

Federal Rule of Civil Procedure 65(a) authorizes a court to issue a preliminary injunction. The Eighth Circuit has characterized a preliminary injunction as an

"extraordinary remedy, and the burden of establishing the propriety of an injunction is on the movant." *Watkins Inc. v. Lewis,* 346 F.3d 841, 845 (8th Cir.2003) (citing *Calvin Klein Cosmetics Corp. v. Lenox Labs., Inc.,* 815 F.2d 500, 503 (8th Cir.1987); *Goff v. Harper,* 60 F.3d 518, 520 (8th Cir.1995)). When dealing with an injunction, the court is exercising its inherent powers, "as a court of equity." *Sturgis Motorcycle Rally, Inc. v Rushmore Photos & Gifts, Inc.,* 592 F.Supp.3d 940, 969-70 (U.S.D.C. D.S.D. W.D. 2021). The South Dakota Supreme Court has long recognized, as its federal judicial counterparts, that, "[i]njunctive relief is an equitable remedy." *Sturzenberger v. Sioux County Ranch, LLC,* 2025 S.D. 24, ¶18, 20 N.W.3d 419, 426 (S.D. 2025).

B. Discretion of the Court

A district court has broad discretion in ruling on requests for preliminary injunctions; *Kroupa v. Nielsen*, 731 F.3d 813, 818 (8th Cir.2013); *Medicine Shoppe Int'l, Inc. v. S.B.S. Pill Dr., Inc.,* 336 F.3d 801, 803 (8th Cir.2003).

C. Equitable Prerequisites to Injunctive Relief

1. Unclean Hands

"'[H]e who comes into equity must come with clean hands.' *Sturgis Motorcycle Rally, Inc. v Rushmore Photo & Gifts, Inc*., 592 F.Supp.3d 940, 980-81 (U.S.D.C. D.S.D. W.D. 2021, Viken, J), quoting *Precision Instrument Mfg. Co. v. Automobile Maintenance Machinery Co*., 324

U.S. 806, 814, 65 S.Ct. 993, 89 L.Ed. 1381 (1945). 'This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant.' *Id*. (internal citation omitted). 'This maxim necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant. It is not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion.' *Id.* at 815, 65 S.Ct. 993 (internal quotation marks and citation omitted). 'The clean hands doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith.' *See 11A Fed. Prac. & Proc Civ § 2946 (3rd Ed.)*. "This presupposes a refusal on [the court's] part to be 'the abetter of iniquity.'" *Id*. at 814, 65 S.Ct. 993. "[O]ne's misconduct need not necessarily have been of such a nature as to be punishable as a crime or as to justify legal proceedings of any character. Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim[.]" *Id*. at 815, 65 S.Ct. 993. Equity requires that "they [the applicant for equitable relief] shall have acted fairly and without fraud or deceit as to the controversy in issue." *Id*. *Keystone Driller Co. v. General Excavator Co*., 290 U.S. 240, 245, 54 S.Ct. 146, 147, 78 L.Ed. 293; *Johnson v. Yellow Cab Transit Co*., 321 U.S. 383, 387, 64 S.Ct. 622, 624, 88 L.Ed. 814; 2 Pomeroy, *Equity Jurisprudence* (5th Ed.) ss 397-399. In the present case, Defendants bear "the burden of proving that [defendants'] hands were unclean." *Conan Properties, Inc., v. Conans Pizza, Inc*., 752 F.2d 145, 150 (Fifth Cir. 1985).

2. Doing Equity

A principle closely related to the clean-hands maxim is that before a plaintiff will be permitted to invoke the aid of a court of equity, the plaintiff must do equity. This principle is based on the belief that the power of a court of equity should not be used to punish a person whose conduct is injuring the applicant when the applicant refuses to act justly and correct any improprieties he may have committed. 11A *Fed. Prac. & Proc. Civ.* § 2946 (3rd Ed.).

3. Adequate Remedy At Law

The Supreme Court has held that a court cannot use its equitable powers to grant a preliminary injunction when the injunction only seeks a legal remedy. *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.,* 527 U.S. 308, 333 (1999). In interpreting *Grupo,* the Eighth Circuit has reasoned that a district court cannot use its equitable power of an injunction when the underlying case is legal in nature. *Kennedy Bldg. Assocs. v. CBS Corp.,* 476 F.3d 530, 535 (8th Cir.2007) (reasoning further that a state statute could create an equitable remedy for a legal cause of action). "The law is clear ... that 'a dollar loss invokes the Court's legal powers, as opposed to its equitable powers .'" *Gen. Motors Corp. v. Harry Brown's, LLC,* 590 F.Supp.2d 1134, 1138 (D.Minn.2008), *aff'd Harry Brown's, LLC,* 563 F.3d 312 (8th Cir.2009) (quoting *Halikas v. Univ. of Minn.,* 856 F.Supp. 1331, 1334 (D.Minn.1994)); *see also Franklin v. Gwinnett Cnty. Public Sch.,* 503 U.S. 60, 75–76 (1992) ("[I]t is axiomatic that a court should determine the adequacy of a remedy in law before resorting to equitable relief."). And it is "well settled that equity only applies if there is an inadequate remedy at law." *Sturzenberger v. Sioux County Ranch, LLC*, 2025 S.D. 24, ¶18, 20 N.W.3d 419, 426 (S.D. 2025), citing *Holzworth v. Roth*, 78 S.D. 287, 291, 101 N.W.2d 393, 395 (1960).

III. The Four *Dataphase System* Elements for Preliminary Injunctive Relief

In *Oglala Sioux Tribe v. United States,* 674 F.Supp.3d 635, 643-44 (U.S.D.C. D.S.D. W.D. 2023, Lange, J.), this Court examined the standards of review for the appropriateness of a request for injunctive relief. The District Court "'evaluates (1) the movant's likelihood of success on the merits, (2) the threat of irreparable harm to the movant, (3) the balance of the equities between the parties, and (4) whether an injunction is in the public interest.' *Powell v. Ryan*, 855 F.3d 899, 902 (8th Cir. 2017) (citing *Dataphase Sys., Inc. v. C L Sys., Inc*., 640 F.2d 109, 114 (8th Cir. 1981) (en banc)). 'No single factor is dispositive, as the district court must

balance all factors to determine whether the injunction should issue. However, in deciding whether to grant a preliminary injunction, likelihood of success on the merits is most significant.' *Turtle Island Foods, SPC v. Thompson*, 992 F.3d 694, 699 (8th Cir. 2021) (cleaned up and citations omitted). *See also Sturzenberger v. Sioux County Ranch, LLC*, 2025 S.D. 24, ¶18, 20 N.W.3d 419, 426 (S.D. 2025), citing *Hedlund v. River Bluff Estates, LLC,* 2018 S.D. 20, ¶ 15, 908 N.W.2d 766, 771 (citation omitted).

PRELIMINARY STATEMENTS
OF MATERIAL UNCONTROVERTED FACTS

Decedent Joye M. Braun

1. At all times material, the decedent, Joye M. Braun (hereinafter "Braun" or "decdent"), was an enrolled member of the Cheyenne River Sioux Tribe (the "Tribe") and is an "Indian" within the meaning of federal Indian law.[2] The decedent was not an official of the Tribe.

(Ex. 1, Affidavit of Durin Mundahl, ¶ 7; *FTC v. Payday Financial, LLC*, 935 F.Supp.2d 926, 929 (U.S.D.C. D.S.D. C.D.), n. 1)

2. At all times material, the decedent resided on the Cheyenne River Sioux reservation.

(Ex. 1, Affidavit of Mundahl, ¶ 7).

3. The decedent was the natural mother of the two co-Defendants in the captioned case.

(Ex. 1, Affidavit of Mundahl, ¶¶ 6,7, 8, 12).

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[2] *FTC v. Payday Financial, LLC*, 935 F.Supp.2d at 929, n. 1:

"The word "Indian" has acquired a legal meaning through the course of this nation's history. The origin of the word "Indian" dates back to the mistaken belief of early European explorers in North America that they had encountered people in the East Indies. While it is more appropriate in this era to refer to this nation's indigenous people as Native Americans or American Indians, this Opinion and Order uses the word "Indian" as that is the word used for two centuries in legal opinions to refer to the indigenous population of North America and has come to have a distinct legal meaning. *See St. Cloud v. United States,* 702 F.Supp. 1456, 1459–61 (D.S.D.1988) (delineating meaning of "Indian" under laws of the United States); *see also United States v. Stymiest,* 581 F.3d 759, 763–64 (8th Cir.2009)."

4. The decedent married Floyd Braun on June 18, 2005 in Tacoma, Washington. Mr. Braun was not an enrolled member of the Cheyenne River Sioux Tribe, or any other tribe. While husband and wife, Mr. Braun did reside for awhile on the Cheyenne River Sioux Reservation prior to the date he deserted Joye Braun in April 2021.

(Ex. 1, Affidavit of Mundahl, ¶¶ 9, 10, 11; Ex. 3; Cheyenne River Sioux Tribal Court, *Joye Braun v Floyd Braun*, Case No. 22D061).

5. Ms. Braun was a full time employee of Indigenous Environmental Network (hereinafter "IEN") starting in 2022 and was a participant in the TriNet HR XI, Inc. Plan ("Your Plan").

(Complaint, ¶ 10; Ex. 1, Affidavit of Mundahl, ¶¶ 6, 12; Ex. 5., TriNet Plan).

6. The decedent held the position at IEN as "Pipeline Organizer." The IEN job description stated, in part, "[t]his position will be remote based," which meant she would be working at her residence on the Cheyenne River Sioux Tribe reservation. She worked online, by text, email, zoom and telephone while based in her residence.

(Ex. 1, Affidavit of Mundahl, ¶¶ 6, 12; Ex. 4, IEN Pipeline Organizer Job Description).

7. At the end of her 90 day probationary period, the decedent was solicited in her residence online by MetLife via TriNet HR XI, Inc. for life and disability insurance-related insurance products.

(Ex. 1, Affidavit of Mundahl, ¶¶ 8, 12, 13, 14, 17).

8. Based upon the solicitation she reviewed on her computer at her home, she contracted with MetLife by payment of monthly premiums paid to MetLife through payroll deductions for life insurance and accidental death and disability coverages (among other coverages) in the face amount of at least $40,000. The decedent received from Met Life a "Certificate of Insurance," which provided, in part,

> Metropolitan Life Insurance Company ("MetLife"), a stock company, *certifies that You are insured for the benefits described in this certificate*, subject to the provisions of this certificate. *This certificate is issued to You under the Group Policy* and *it includes the terms and provisions of the Group Policy that describe Your insurance*. PLEASE READ THIS CERTIFICATE CAREFULLY.

(Exs. 5, 6, 9; Plaintiffs' Ex. A) (Italics added).

9. For the IEN's TriNet plan for the calendar year of 2022, TriNet sent the deceased the following, in relevant part:

> Thank you for choosing TriNet! Thank you for submitting your benefit selections and funding strategy for Indigenous Environmental Network. Your confirmation number is: HMGS5GLX3J9W. Below is a summary of your benefit selections…If any of the information listed on this confirmation is incorrect or if you need to make additional changes, log in to TriNet (login.trinet.com) and make any necessary changes before you load any worksite employee data…

(Ex. 5, 6, 9).

10. For the IEN's TriNet plan for the calendar year of 2022, TriNet sent the deceased the following, in relevant part:

> TriNet is the single-employer sponsor of all its benefit plans. This communication is for informational purposes only, is not legal, tax or accounting advice, and is not an offer to sell, buy or procure insurance. TriNet reserves the right to amend the benefit plans or change the offerings and deadlines. Official plan documents always control. Click here for the full disclaimer. *Voluntary benefit plans are offered by Aflac or MetLife and are not ERISA-covered group health insurance plans*. Enrollment is completely voluntary. If you enroll in a plan you must deal directly with the insurance company to request assistance or submit a claim. TriNet will always offer you an unsubscribe option on non-mandatory communications. However, benefit communications are generally required by law, and are therefore mandatory and not subject to an unsubscribe option.

(Ex. 5, 6; Italics added).

11. The Plaintiffs disseminated a Plan Summary to the decedent for 2022 online for access at her residence. The "Plan Summary" stated in relevant part:

Who Can Be A Designated Beneficiary?

You can select any beneficiary(ies) other than your employer for your Basic and Supplemental coverages, and *you may change your beneficiary(ies) at any time. You can also designate more than one beneficiary*. You are the beneficiary for your Dependent coverage.

(Affidavit of Mundahl, ¶¶ 6, 7, 8, 12, 13, 14, 17, 18; Ex. 6, TriNet "Plan Summary").

12. The co-Plaintiff TriNet provided the decedent a document titled "Your Benefit Plan, consisting of 48 pages, which provides the following, in relevant part,

Beneficiary

You may designate a Beneficiary in Your application or enrollment form. *You may change Your Beneficiary at any time*. To do so, You must send a Signed and dated, Written request to the Policyholder using a form satisfactory to Us. Your Written request to change the Beneficiary must be sent to the Policyholder within 30 days of the date You Sign such request.

You do not need the Beneficiary's consent to make a change. *When We receive the change, it will take effect as of the date You Signed it.* The change will not apply to any payment made in good faith by Us before the change request was recorded…

(Ex. 5, "Your Benefit Plan" TriNet HR XI, Inc. Certificate No. 17, p. 47, Italics supplied).

13. On October 25, 2022, decedent Joye Braun filed a verified "Divorce Complaint" in the Cheyenne River Sioux Tribal Court, styled "*Joye Braun v Floyd Braun.*" Among the claims asserted by the decedent was that, "Defendant [Floyd Braun] has willfully deserted the Plaintiff [Joye Braun] for a period of more than one year…he left April 30, 2021." Approximately, a week later, the decedent re-asserted/acknowledged/'changed' the beneficiaries listed on her IEN Plan regarding Life Insurance and AD&D Insurance issued by MetLife/TriNet HR XI, Inc. fully to her two natural children, Durin Mundahl and Morgan Brings Plenty. Curiously, since at least June 2022, on TriNet generated payroll forms, the decedent's marital status was listed as "single," no doubt as a consequence of being deserted by her spouse about 16 months earlier. Due to the Decedent's death on November 13, 2022, the Tribal Court, *sua sponte*, dismissed the Divorce Action.

(Ex. 1, ¶¶ 9, 10, 11, 18; Ex. 3, Cheyenne River Sioux Tribal Court, *Joye Braun v Floyd Braun*, Case No. 22D061; Ex. 11).

14. On or before November 4, 2022, the decedent, using a form provided online by TriNet HR XI, Inc., executed a 'change' in beneficiaries to "P - Morgan Rose Brings Plenty - 50% P - Durin Sebell Mundahl," and emailed the 'changes' in beneficiaries to TriNet HR XI, Inc.. (Ex. 9). Floyd Braun was never listed as a formal named beneficiary on the Metlife or TriNet policy/plan, at any time. On her TriNet paystub from June, 2022 through November, 2022, the decedent was shown as "single."

(Ex. 1, Affidavit of Mundahl, ¶¶ 8, 12, 13, 14, 18; Ex. 11).

15. On November 4, 2022, nine days before the unexpected death of the decedent, Plaintiff TriNet confirmed receipt of the decedent's 'change' of beneficiaries in the MetLife life and AD&D insurance by email to the decedent at her work email: joye@ienearth.org. The Plaintiff TriNet's email to the decedent stated, in relevant part,

"Open Enrollment Confirmation

Thank you for submitting your TriNet benefit elections…

Please confirm the accuracy of your benefit elections…

Your TriNet Benefits…

Your Life & Disability Plan Election

Coverage Type	**Coverage**	**Beneficiaries**	**Pay Period Cost**
Life & AD&D	$40,000	P - Morgan Rose Brings Plenty - 50% P - Durin Sebell Mundahl	$0.00"

(Ex. 9).

16. Contrary to the November 4, 2022 email confirmation, the decedent's 'change' of beneficiaries was not a "Life…Plan Election," as the MetLife life Insurance in the face amount of

$40,000 was not changed, and the coverage limit was the lowest basic policy limit available to the decedent. The change of beneficiaries could be performed, according to the TriNet Plan Summary "at any time," and the IEN "Plan" provided that decedent "may change Your Beneficiary at any time…[w]hen We receive the change, it will take effect as of the date You signed it."

Plaintiffs acknowledged and confirmed the decedent's 'change' in beneficiaries by email dated November 4, 2022.

(Ex. 9, TriNet Confirmation email and form).

17. The decedent passed away on November 13, 2022.

(Complaint, ¶ 14).

Co-Defendants Durin Mundahi & Morgan Brings Plenty

18. At all times material, Defendants Durin Mundahl ("Mundahl," or "Defendant") and Morgan Brings Plenty ("Brings Plenty" or Defendant") were each enrolled members of the Cheyenne River Sioux Tribe (the "Tribe") and were each an "Indian" within the meaning of federal Indian law. Neither named Defendant is an official of the Tribe, and neither Defendant represents or acts on behalf of the Tribe.

(Ex. 1, Affidavit of Mundahl, ¶¶ 3, 4, 5; *FTC v. Payday Financial, LLC*, 935 F.Supp.2d 926, 929 (U.S.D.C. D.S.D. C.D.), n. 1).

19. Defendant Durin Mundahl is the son of the decedent. Mr. Mundahl is a citizen of South Dakota and domiciled in Eagle Butte, South Dakota on the Cheyenne River Sioux Reservation. Mr. Mundahl is the appointed personal representative of the Estate of Joye M. Braun.

(Complaint, Doc.# 1, ¶ 3; Ex. 1, Affidavit of Mundahl, ¶¶ 1, 2, 3, 4, 5).

20. Defendant Mundahl is presently employed by Indigenous Environmental Network .,

(Ex. 1, Affidavit of Mundahl, ¶ 5).

21. Defendant Morgan Brings Plenty is the daughter of the decedent. Ms. Brings Plenty is a citizen of South Dakota and domiciled in Eagle Butte, South Dakota on the Cheyenne River Sioux Reservation.

(Complaint, Doc.# 1, ¶ 4; Ex. 2).

TriNet HR XI, Inc.

22. Plaintiff TriNet HR XI, Inc. advised Mr, Mundahl that, "unfortunately, the election/changes Joyce [sic] made to her TriNet Benefits were not effective on the date of her death and when the claim was filed." Instead, Plaintiffs paid the $40,000 basic life policy proceeds to the decedent's estranged husband, Floyd Braun, who was never a named beneficiary at all on the policy plan.

(Ex. 1, Affidavit of Mundahl, ¶¶ 2, 14, 17; Exs. 8).

Cheyenne River Sioux Tribal Court Proceedings

23. On November 6, 2024, the Defendants filed a Complaint in the Cheyenne River Sioux Tribal Court, Case No. 24C037, against TriNet and Met Life arising out of the Plaintiffs' payment of the $40,000 MetLife life insurance proceeds on decedent's life to estranged husband, Floyd Braun, among other specific claims. The CRST Tribal Civil Court has previously assumed tribal court civil jurisdiction over a nonmember corporate insurer, under very similar claims as in the tribal court action here. *See Ex. 11*, the pleadings concerning *Mona Thompson v. Allstate Insurance Company*, Civ. No. 22-C-046, Cheyenne River Sioux Tribal Court, Civil Court (2022), which was settled by payment without any formal jurisdictional dispute (insurance policy marketed, sold, advertised, and delivered, over internet transactions while CRST tribal member policyholder resided and worked on the reservation).

(Exs. 10, 11).

ARGUMENTS AND AUTHORITIES

I. THE DISTRICT COURT, EMPLOYING THE TRIBAL EXHAUSTION DOCTRINE AND GOVERNING PRINCIPLES OF COMITY, MUST STAY THESE PROCEEDINGS IN DEFERENCE TO THE CHEYENNE RIVER SIOUX TRIBAL COURT

A. The Cheyenne River Sioux Tribal Court Has Asserted Jurisdiction

This Court has previously recognized the Cheyenne River Sioux Tribe (the "Tribe" or "CRST") as a "distinct, independent political community." *F.T.C. v Payday Financial, LLC*, 935 F.Supp.2d 926, (D.S.D. 2013). In doing so, comes further judicial recognition that CSRT "retain[s] a sovereignty of…self-governance over tribal members within the boundaries of the tribes' reservation lands." *Id*. The present issue, however, is whether the Plaintiffs, tribal non-members, are subject to the jurisdiction of the CRST court system.

In *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981), the United States Supreme Court held that "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." *Montana,* 450 U.S. at 565, 101 S.Ct. 1245. "When a tribe's jurisdiction is not specifically authorized by federal statute or treaty, a tribe's adjudicatory authority must stem from its 'retained or inherent sovereignty.'" The "pathmaking" court in *Montana* then recognized two exceptions to this general principle under which tribes may exercise "civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands." *Id.; see also Plains Commerce Bank,* 554 U.S. at 329, 128 S.Ct. 2709. The Court in *Montana* phrased the two exceptions as follows:

> A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct

> effect on the political integrity, the economic security, or the health or welfare of the tribe.

Montana, 450 U.S. at 565–66, 101 S.Ct. 1245 (internal citations).

While Defendants assert that both exceptions may be applicable to affix CRST Court jurisdiction over the Plaintiffs, the focus turns to the first *Montana* exception as it relates to nonmembers who enter consensual relationships with the tribe or its members. The decedent was an enrolled member of the CRST, lived on the CRST reservation, and worked remotely by computer. (SMUF # 1, 2, 4, 5, 6, 8, 9, 10, 11, 12, 15, 16). The Plaintiffs solicited insurance products for purchase by the decedent, provided plan and separate insurance policies and explanatory coverage documents, withdrew monthly premium payments, allowed changes in coverage and processed claims - all done online that was transmitted by and between the decedent and Plaintiffs to and from the CRST reservation. (SMUF # 7, 8, 9, 10, 11, 12, 14, 15, 22). The Plaintiffs have admitted the contractual relationship with the Indian decedent. (Doc. #13, p. 3).

The CRST Court possesses jurisdiction over Plaintiffs due to the contractual and otherwise consistent, consensual relationship between the decedent and the Plaintiffs. Based upon the significant consensual relationship, CRST Court and the CRST "retain the power under *Montana* to regulate [nonmember] conduct" and "it makes no difference whether it does so through precisely tailored regulations or through litigation in tribal court." *F.T.C.*, *Id*., at 932-933; *Fox Drywall & Plastering, Inc. v. Sioux Falls Const. Co.,* No. 12–4026, 2012 WL 1457183, at *7 (D.S.D. April 26, 2012) (quoting *Attorney's Process One,* 609 F.3d at 938).

B. Based Upon These Significant Consensual Relationships With Decedent On the CRST Reservation, This Court Should Apply the Tribal Exhaustion Doctrine As A "Threshold" Issue, And Stay Or Dismiss This Action

The Defendants submit the decedent's significant and ongoing consensual relationships with the Plaintiffs were centered on the CRST reservation. The Defendants further argue that CRST sovereignty, which "forms the epicenter of the tribal exhaustion doctrine," should be employed to compel the Plaintiffs to first exhaust their remedies in the CRST Court before coming to federal court. This Court, in *Nygaard v Taylor*, 563 F.Supp.3d 992, 1015-16 (D.S.D. 2021), described the tribal exhaustion doctrine as a "threshold issue." *Id*., at 1016.

This Court further explained that the doctrine provides that, "a petitioner exhausts his tribal remedies only if he has given the tribal courts a 'full opportunity' to 'evaluate the factual and legal bas[is] for the challenge to its jurisdiction.'" *Id., at 1019.* "The tribal court has been given a full opportunity to evaluate its jurisdiction if the tribal court has made an initial decision and that decision has been reviewed by a tribal court of appeals. (Citations omitted). Until there has been appellate review, a federal court should not intervene." *Id*.

CRST Tribal Court should be allowed by this Court to assert their authority over reservation affairs, such as presented here, without first being compelled to simultaneously compete against this Court. The importance of CRST's sovereignty and self-determination, as well as the complementary principles of comity, arguably dictate the application of the tribal exhaustion doctrine. Feasibly, the corporate Plaintiffs in this action, Metlife and TriNet, as 'corporate persons,' may be construed as 'bad men' under Article One of the 1868 Ft. Laramie Treaty, having committed potential civil wrongs against tribal members on the reservation and treaty territory. This Court is requested to order the stay of these proceedings; if not the dismissal of the Plaintiffs' Complaint and their Motion for Preliminary Injunction.

II. THE PLAINTIFFS HAVE NOT MET THE PREREQUISITES FOR SEEKING EQUITABLE RELIEF, MUCH LESS POSSESS SUPERIOR EQUITIES TO DEFENDANTS

The Plaintiffs' Motion fails to specifically address the equitable prerequisites for seeking equitable relief in this Court. The Defendants argue that the Plaintiffs have not met the equitable prerequisites as a matter of law. Furthermore, the Defendants, not the Plaintiffs, possess the superior equities in the case sub judice. The Defendants submit that the Plaintiffs have failed to do equity, they individually and collectively have unclean hands and the Plaintiffs have an adequate remedy at law.

A. Plaintiffs Have Failed to Do Equity

The Defendants recognize the unique nature of equity in the field of law. From its roots in international jurisprudence to its American utility in the courts of law, the concept of equity is a critical threshold component of the equitable remedy the Plaintiffs seek from this Court. As Defendants have characterized it, the concept of equity is a necessary prerequisite to accessing equitable remedies such as that sought by Plaintiffs in the present case.

Blacks's Law Dictionary defines the word "equity" as,

> "In its broadest and most general signification, this term denotes the spirit and the habit of fairness, justness and right dealing which would regulate the intercourse of men with men–the rule of doing to all others as we desire them to do to us."

Black's Law Dictionary, 4th Ed.

Perhaps the preeminent authority on federal civil procedure recognizes the legal principle, applicable to the present case, "that before a plaintiff will be permitted to invoke the aid of a court of equity, the plaintiff must do equity." 11A *Fed. Prac. & Proc. Civ.* § 2946 (3rd Ed.). This principle is based on the belief that the power of a court of equity should not be used to punish a person whose conduct is injuring the applicant when the applicant refuses to act justly and correct any improprieties he may have committed. *Id*.

The Plaintiffs offend the traditional sense of "doing equity." The Plaintiffs had no problem securing the financial benefits of its consensual dealings with the decedent on the Cheyenne River Sioux Tribe's reservation. Utilizing contracts of adhesion, Plaintiffs used the reservation, the Tribe and its members in purveying insurance products to the decedent on the reservation. However, as native Americans can historically attest, the words often used by non-members such as Plaintiffs, whose unrestricted reservation access brings them financial profits, often defy their actions when called upon to perform on their unambiguous agreements when a tribal member seeks to access those benefits. Then, when the Tribal member dares challenge the denial of those benefits in a tribal court setting, Plaintiffs seek equitable relief, not in the tribal court on the reservation, but seek extraordinary, equitable relief outside of the tribal court in a federal court venue and setting. Suffice it to say, Plaintiffs have not done equity. Their access to obtaining federal court relief in these circumstances, by shunning the CRST court, violates the very "spirit and habit of fairness and right dealing" that is inherent in doing equity.

B. Plaintiffs Have Unclean Hands

Another threshold issue is whether the Plaintiffs possess "unclean hands" such that seeking equitable powers of this Court should be refused. In other words, "unclean hands" is "far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." *Sturgis Motorcycle Rally, Inc. v Rushmore Photo & Gifts, Inc*., 592 F.Supp.3d 940, 980-81 (U.S.D.C. D.S.D. W.D. 2021, Viken, J), quoting

Precision Instrument Mfg. Co. v. Automobile Maintenance Machinery Co., 324 U.S. 806, 814, 65 S.Ct. 993, 89 L.Ed. 1381 (1945).

It is likewise probative to discern the nature and extent of conduct by the party accessing equitable remedies that constitute "unclean hands." In *Stugis*, the Court quoted the Supreme Court in *Precision Instrument*, which included as "unclean hands," "[a]ny willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim[.]' " *Id*. 324 U.S. at 815, 65 S.Ct. 993. "Equity requires that 'they [the applicant for equitable relief] shall have acted fairly and without fraud or deceit as to the controversy in issue.'" *Id*. *Keystone Driller Co. v. General Excavator C*o., 290 U.S. 240, 245, 54 S.Ct. 146, 147, 78 L.Ed. 293; *Johnson v. Yellow Cab Transit Co*., 321 U.S. 383, 387, 64 S.Ct. 622, 624, 88 L.Ed. 814; 2 Pomeroy, *Equity Jurisprudence* (5th Ed.) ss 397-399.

In the present case, Defendants bear "the burden of proving that [defendants'] hands were unclean." *Conan Properties, Inc., v. Conans Pizza, Inc*., 752 F.2d 145, 150 (Fifth Cir. 1985). The Plaintiffs have unclean hands in two discrete respects.

First, the Plaintiffs have unclean hands regarding the use of documents that are misleading and lack adequate warning to reservation members and, as utilized by Plaintiffs, creates patent ambiguities. Tribal members had no input on the drafting of the contracts/certificates of insurance, the Plan documents, Plan Summaries, and other related documents. In all the morass of the ERISA documents, which Defendants do not believe applies in this case, there is no warning to the tribal members that tribal court jurisdiction may not be accessible in the case of any dispute and the forum/venue will be outside of the reservation in a federal, not tribal court, where tribal laws and protections are unavailable. The willfulness of the Plaintiffs' actions is not providing separate tribal-based warnings that are given to numerous differing states, but not to sovereign tribes,

including the CRST, constitutes willfulness, as well as possibly deceptive, unconscionable conduct, compelling invocation of the maxim.

Second, the Plaintiffs' "unclean hands" extends to the known targeted marketing of Plaintiffs to tribal members, but refusing access to their tribal courts, their tribal rights and protections by hiding behind laws such as ERISA in enforcing their sovereign rights, privileges and immunities. The Defendants submit such conduct constitutes "unclean hands."

The Court should find that Plaintiffs possess unclean hands and deny any equitable relief.

C. Plaintiffs Have An Adequate Remedy At Law

The Defendants submit that Plaintiffs have an adequate remedy at law which bars equitable relief. Plaintiffs' problem with the adequate remedy at law is that it is lodged in the CRST Court, where they submitted to tribal court jurisdiction by their marketing, contracting and receiving material financial benefits from tribal members residing on the reservation. Plaintiffs subjected themselves to the uncharted shoals of tribal jurisdiction, where adequate legal remedies exist. However, rather than risk the exposure possibly residing in the CRST Tribal Court, including Plaintiffs' alleged fraud, deceit, bad faith and possible punitive damages and a substantial monetary loss of their own making, Plaintiffs now seek the safe harbor of ERISA in this Court. Such an attempt to evade accountability to those Plaintiffs contracted on the CRST reservation is not equitable, because the "law is clear ... that 'a dollar loss invokes the Court's legal powers, as opposed to its equitable powers .'" *Gen. Motors Corp. v. Harry Brown's, LLC,* 590 F.Supp.2d 1134, 1138 (D.Minn.2008), *aff'd Harry Brown's, LLC,* 563 F.3d 312 (8th Cir.2009) (quoting *Halikas v. Univ. of Minn.,* 856 F.Supp. 1331, 1334 (D.Minn.1994)); *see also Franklin v. Gwinnett Cnty. Public Sch.,* 503 U.S. 60, 75–76 (1992). It is equally clear to Defendants that Plaintiffs have adequate, but distasteful, legal remedies. Simply put, a "court cannot use its equitable powers to grant a preliminary injunction when the injunction only seeks a legal remedy. *Grupo Mexicano de*

Desarrollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 333 (1999); *Kennedy Bldg. Assocs. v. CBS Corp.,* 476 F.3d 530, 535 (8th Cir.2007) (reasoning further that a state statute could create an equitable remedy for a legal cause of action). The Plaintiffs' requested equitable relief only seeks a legal remedy.

III. ON THE MERITS FOR A RULE 65(a) PRELIMINARY INJUNCTION MOTION, PLAINTIFFS FAIL TO ESTABLISH THE FOUR *DATAPHASE* FACTORS FOR ISSUANCE OF A PRELIMINARY INJUNCTION

A. The Plaintiffs' Position For Denying Defendants' Claim Is Specious And Without Merit, Thereby Failing To Establish Plaintiff's Likelihood of Success On The Merits

The Plaintiffs argue the exclusive jurisdiction of ERISA in their brief. *Plaintiffs' Br. 10-16*. However, 29 U.S.C. § 1132(e)(1) also allows state courts of "competent jurisdiction" to have "concurrent jurisdiction." *Id*. It is noteworthy that tribal jurisdiction is not found within the statute cited by Plaintiffs. Plaintiffs make the statement that "the tribal court lacks subject jurisdiction over ERISA-governed matters." In other words, as argued by Defendants in the equitable prerequisites section of their Response, Plaintiffs truly acted inequitably when they market, contract and accept insurance premiums from tribal members on the reservation whom Plaintiffs know are deprived of their tribal court rights, privileges and immunities. But, Defendants believe that Plaintiffs have made a misstatement of the law as asserted in their Response.

The Plaintiffs assert that tribal courts "do not generally have jurisdiction over non-members." *Br. at 11-12*. But, Plaintiffs fail to address Defendants' argument that the "consensual relationship" *Montana* exception provides tribal courts, like the CRST court, with the power to regulate nonmember conduct in the present case. Plaintiffs fail to address, much less attempt to distinguish, this exception in their briefing.

Plaintiffs baldly argue that tribal exhaustion "is not required." *Br. at 14*. Since Plaintiffs ignored CRST court jurisdiction through the first *Montana* exception, it is expected that Plaintiffs would follow up with a conclusive, superficial argument dismissing the tribal exhaustion doctrine. Quite contrary to their conclusion, Defendants have addressed the tribal exhaustion doctrine in this Response. Defendants have submitted a motion to stay or dismiss these proceedings based upon the doctrine. Plaintiffs may not use the CRST, the reservation and its members and escape the jurisdiction of the tribal court. This Court should order that the CRST Court has jurisdiction over the matter, pending in its court.

The Defendants take issue with the Plaintiffs' claim that the CRST Court "lacks personal jurisdiction" over them. *Br. at 14-15*. As a matter of equity, which is fully in view in the present case, Plaintiffs may not seek and retain benefits from contracting on the CRST reservation and its members, and evade its jurisdiction for wrongful conduct. They both availed themselves of the tribal forum, and must answer the attendant burdens.

Due to its inequitable conduct, the Plaintiffs will not prevail on the merits, because the Defendants insist that these Plaintiffs have not done equity, have unclean hands and have an adequate remedy at law. Consequently, the Plaintiffs are not able to prevail on the "most important" *Dataphase* factor. Defendants assert that ERISA does not apply here, but also assert that if Defendants are allowed to develop and show the proof in the evidence, that decedent's specific intent to re-affirm and 'change' the named beneficiaries to her two adult children, Defendants will prevail on the merits.

B. Plaintiffs' Attempt to Evade Tribal Court Jurisdiction Does Not Constitute A Cognizable Threat of Irreparable Harm

The Plaintiffs assert that they face "imminent and irreparable harm without injunctive relief." Br. at 16-17. While Defendants insist Plaintiffs are unable to prove satisfaction of the

equitable prerequisites for injunctive relief, much less irreparable harm, the argument rings hollow. Plaintiffs voluntarily sought out paying clients from the CRST reservation. They retained the benefits, but attempt to inequitably evade the burdens. Instead, they seek protection from the very relationships they used for profit.

The Plaintiffs attempt to evade the jurisdictional reach of the tribal courts does not constitute irreparable harm. The Plaintiffs have not demonstrated the likelihood, or even the possibility, of irreparable harm. The argument that Plaintiffs will suffer irreparable harm "if proceedings in tribal court are allowed to continue," *Br. at 16-17*, borders on the absurd. Equally absurd is the premise that Plaintiffs can operate business within the CRST reservation and its tribal members without accountability on the reservation in tribal court. There is no support that there is a cognizable threat of irreparable harm to Plaintiffs.

C. The Balance Of The Equities Between the Parties Favors Defendants' Claims

The Plaintiffs present the claim that the "balance of the equities strongly favors injunctive relief." *Br. at 17-18*. In support of the argument, they state that "[Plaintiffs] face the ongoing burden of defending claims in a forum that lacks subject matter jurisdiction and personal jurisdiction." *Br. at 18.* As Defendants have pointed out, the "burdens" of the Plaintiffs is far outweighed, in the balance of equities, by the equities of the Defendants. Defendants are the ones with vastly superior equities over the Plaintiffs. Since the filing of the claim for benefits, Plaintiffs, not Defendants, have acted at every instance with inequitable conduct. The Decedent, as an enrolled member of the CSRT, paid monthly insurance premiums to Plaintiffs targeting her working, living and being supported by the CRST reservation. Yet, when her children are denied the benefits she paid for to Plaintiffs, and the Plaintiffs seek out-of-the-reservation remedies,

inequity takes on real meaning. The Court should reject Plaintiffs arguments that a balance of the equities favors their wrongful conduct.

D. An Injunction Sought Is Not In Favor of the Public Interest, But the Interests of the Cheyenne River Sioux Tribe and Its Members Are Paramount

The Plaintiffs assert that their requested injunctive relief "serves the public interest." *Br. at 18-19*. Defendants see the competing, even controlling, public interests as protecting the self-governance and integrity of the tribal court system on the CRST reservation from those seeking to malign it to save money and protect profits. The public interest truly seeks to protect the disadvantaged and allow them the freedom to live on the reservation. The injunctive relief sought by Plaintiffs is solely meant to protect them as for-profit enterprises - not in the "public interest." The paramount public interest centers on the interest of the CRST, the reservation and its members.

Plaintiffs' requested relief protects them - at the expense of the public interest and contrary to that interest. The Court should reject this Dataphase factor as favoring Plaintiffs.

IV. THE PROFERRED BOND IS INADEQUATE AS A MATTER OF FEDERAL LAW

The Plaintiffs assert that "minimal bond is appropriate."[3] (Doc.# 13, p. 19-20). They proffer a bond in the paltry sum of "$405." Plaintiffs reason, without support, that the "risk of harm to Defendants from an injunction is negligible." *Id*., at 19. It appears that Plaintiffs misapprehend the underlying reason Rule 65(c) mandates that a preliminary injunction issues, "only if the movant gives security in the amount that the court considers proper to pay the costs *and damages* sustained by any party found to have been wrongfully enjoined." Rule 65(c); (italics added). The 8th Circuit, in *Slidell, Inc. v. Millennium Inorganic Chemicals, Inc*., 460 F.3d 1047,

[3] The Defendants present this argument, alternatively, without waiver, release or estoppel to their position that the Plaintiffs' Complaint (Doc. # 1), as well as their Motion for Preliminary Injunction (Doc. # 13) should be overruled, and dismissed.

1059 (8th Cir. 2006), found that "a party has been wrongfully enjoined if it is ultimately found that the enjoined party had at all times the right to do what it was enjoined from doing."

Generally, "[a] party injured by the issuance of an injunction later determined to be erroneous has no action for damages in the absence of a bond." *Sturgis Motorcycle Rally, Inc. v Rushmore Photo & Gifts, Inc*., 529 F.Supp.3d 940, 969-70 (U.S.D.C. D.S.D. W.D. 2021, Viken, J.), quoting *W.R. Grace & Co. Local Union 759*, 770 n.14, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983) (referencing *Russell v. Farley,* 105 U.S. 433, 437, 26 L.Ed. 1060; *Buddy Systems, Inc. v Exer-Genie, Inc*, 545 F.2d 1164, 1167-68 (9th Cir. 1976). "Where no bond ... has been required, it is clear that the court has no power to award damages sustained by either party in consequence of the litigation, except by making such a decree in reference to the costs of the suit as it may deem equitable and just." *Russell*, 105 U.S. at 436. When no bond is imposed as security for an injunction, the court already concluded "that the damage arising from the injunction [would be] *damnum absque injuria*, and that there could be no recovery[.]" *United Motors Service, Inc., v. Tropic-Aire*, 57 F.2d 479, 483 (8th Cir. 1932) (referencing *Russell,* 105 U.S. 433, 26 L.Ed. 1060).

Essentially, Plaintiffs' suggested preliminary injunction bond amount of $405 defeats the "governing principle that it is the duty of a court of equity granting injunctive relief to do so upon conditions that will protect all ... whose interests the injunction may affect." *Sturgis Motor Rally, Inc,* 592 F.Supp.3d at 969, citing *Inland Steel Co. v. United State*s, 306 U.S. 153, 157, 59 S.Ct. 415, 83 L.Ed. 557 (1939). Any bond covering "damages" of these Defendants "should be enforced in pursuance of its terms; and the party for whose benefit it was given will be entitled to an assessment of damages." *Russell,* 105 U.S. at 443.

While Defendants insist that Plaintiffs are unable to prevail on the preliminary injunction, emanating from a materially flawed Complaint in this court, any notion that an injunction bond of

$405 would cover Defendants' Rule 65(c) contemplated "costs and damages" bears further exploration. For instance, the Plaintiffs disregarded their own written "Plan" documents and wrongfully paid a $40,000 life insurance policy over to the decedent's estranged husband, who had just been sued for divorce in tribal court prior to receiving the payment. Prior to decedent's November 13, 2022 untimely death, and mere days after the tribal court divorce filing against the husband who abandoned decedent over a year previously, Plaintiffs inequitably disregarded clear and unambiguous language wherein decedent named the Defendants her beneficiaries to at least the $40,000 policy. It is not lost that Plaintiffs acknowledged the beneficiary designations in writing to the decedent, and specifically confirmed Defendants as beneficiaries, in writing. Thus, the damages which should be included in any bond should be the face value of the policy, compound prejudgment interest of 10% compounded semi-annually, Defendants' attorneys fees, and a potential recognition of the bad faith and punitive damages claimed by Defendant against the Plaintiffs in the tribal court. *See Ex. 10.* Defendants suggest that Plaintiffs be made to jointly and severally post a surety bond with an approved surety, or deposit, in cash, into this Court's registry, the sum of $500,000. The Defendants allege this whole federal court filing is, at best, to evade the bad faith and punitive damage claims pending in the tribal court complaint against these Plaintiffs under the guise of ERISA - the Plaintiffs have admitted as much. The Tribal Court may likely determine that this policy/plan is not ERISA based. The trier of fact will likely find in favor of the Defendants on the merits of coverage and breach of contract.

CONCLUSION

WHEREFORE, the Defendants request that the Plaintiff's Motion for Preliminary Injunction (Doc. # 13) be denied, their Complaint (Doc.# 1) be dismissed, and Defendants'

separate motion for Motion for Stay, filed concurrently with Defendants' Response, be likewise granted for the above reasons as this Court finds just, equitable and reasonable.

DATED this 15th day of July, 2025.

ZEPHIER & LAFLEUR, P.C.

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Exhibits:
1. Mundahl Affidavit
2. Brings Plenty Affidavit
3. Joye Braun Tribal Divorce Filing
4. IEN Pipeline Job Description
5. TriNet Benefit Plan
6. TriNet Plan Summary
7. Durin Mundahl Estate Representative Appointment
8. Met Life Denial December 23, 2024
9. November 4, 2022 email from TriNet to Joye Braun
10. *Mundahl et al v TriNet & MetLife*
    Summons and Complaint filing in
    Cheyenne River Sioux Tribal Court
    Case No. 24C037
11. TriNet sponsored IEN employee Payroll stub for Joye Braun dated 11-18-22
12. Thompson v. Allstate Insurance Co., Civ. No. 22-C-046, Cheyenne River Sioux Tribal Civil Court pleadings.