

The Honorable John C. Coughenour

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID WILLIAM TURPEN,

Plaintiff,

vs.

KATHERINE ARQUETTE TURPEN, et
al.,

Defendants.

No. 2:22-cv-00496

DEFENDANTS' SURREPLY IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

In accordance with Local Rule 7(g) and having provided notice of the intent to do so (Dkt. # 48), the Defendants respectfully submit this surreply requesting that the Court strike the following new arguments and new law submitted in Plaintiff's Reply (Doc. # 47) in support of his Motion for Summary Judgment (Doc. # 45): (1) Plaintiff's argument that Muckleshoot Tribal Court lacks jurisdiction because of the Treaty of Medicine Creek and cited case law (Reply, pp. 2-4); and (2) Plaintiff's

1 argument that Muckleshoot Tribal Court lacks jurisdiction because of the Law of
2 Nations and citation to Wikipedia in support thereof (Reply, pp. 4-5).

3 In his Motion for Summary Judgment, Plaintiff argues that Muckleshoot Tribal
4 Court lacks *in rem* jurisdiction over the marriage and cites to various Washington
5 State case law. His motion is devoid of any reference to the Treaty of Medicine
6 Creek or any federal case law. On reply, Plaintiff argues for the first time that there
7 is no basis in the Treaty of Medicine Creek to conclude that Muckleshoot Tribal
8 Court retained the right to assert jurisdiction over the dissolution of the marriage of
9 a tribal member and a nontribal member. He cites for the first time *Settler v.*
10 *Lameer*, 507 F.2d 231 (9th Cir. 1974), and *Brendale v. Confederated Tribes & Bands*
11 *of Yakima Indian Nation*, 492 U.S. 408 (1989), to support his new assertion that
12 Muckleshoot Tribal Court lacks jurisdiction because of the Treaty of Medicine
13 Creek. Likewise, Plaintiff raises on reply for the first time his argument that the
14 Muckleshoot's code is null and void because of the law of nations. For support, he
15 cites Wikipedia's description of the Treaty of Westphalia. The Court should strike
16 these new arguments and citations to case law and Wikipedia as improperly made
17 on reply and irrelevant.

18 "As a general rule, a 'movant may not raise new facts or arguments in his reply
19 brief.'" *Karpenski v. Am. Gen. Life Companies, LLC*, 999 F. Supp. 2d 1218, 1226
20 (W.D. Wash. 2014) (citing *Quinstreet, Inc. v. Ferguson*, 2008 WL 5102378, at *4
21 (W.D. Wash. 2008). Thus, "[s]ubmission of arguments or evidence for the first time
22 in a reply is improper because it unfairly deprives the non-movant of an opportunity

1 to respond. *Cedar Park Assembly of God of Kirkland, Washington v. Kreidler*, 402 F.
2 Supp. 3d 978, 991 (W.D. Wash. 2019); *see also, Von Brimer v. Whirlpool Corp.*, 536
3 F.2d 838, 846 (9th Cir. 1976); *DocuSign, Inc. v. Sertifi, Inc.*, 468 F. Supp. 2d 1305
4 (W.D. Wash. 2006).

5 Plaintiff was obligated to provide his arguments and citations that he wished the
6 court to consider with his motion for summary judgment and there is no reason why
7 the new arguments and citations could not have been included with his motion for
8 summary judgment. Plaintiff attempts to raise a new basis because the Defendants
9 pointed out that he failed to show that the Tribal Court lacked jurisdiction over the
10 dissolution proceeding. Because these arguments and citations should have been
11 addressed with his motion for summary judgment, the Court should strike those
12 sections of the brief. *See, Quinstreet, Inc. v. Ferguson*, No. C08-5525RJB, 2008 WL
13 5102378, at *4 (W.D. Wash. Nov. 25, 2008) (Court struck the lines containing new
14 facts and the new citations).

15 In any event, Plaintiff's arguments are meritless. Plaintiff asserts that
16 Muckleshoot has been divested of authority over its member by the ratification of
17 the Treaty of Medicine Creek. This simply is not true. "Indian tribes are
18 'domestic dependent nations' that exercise inherent sovereign authority over their
19 members and territories." *Oklahoma Tax Comm'n v. Citizen Band Potawatomi*
20 *Indian Tribe of Oklahoma*, 498 U.S. 505, 509 (1991). The Muckleshoot Tribal Court
21 has jurisdiction by way of its inherent sovereign authority over its members.

1 Plaintiff also asserts that there is not a clause in the treaty that reserved
2 jurisdiction over a dissolution of marriage. While it is true that no clause in the
3 treaty discusses dissolution of marriage, this fact does not support his assertion
4 that the Muckleshoot Tribal Court lacks jurisdiction over this dissolution because
5 “the treaty was not a grant of rights to the Indians, but a grant of right from them,
6 a reservation of those not granted.” *United States v. Winans*, 198 U.S. 371, 381
7 (1905). Conversely, the treaty’s silence speaks of Muckleshoot’s reservation rather
8 than relinquishment.

9 Moreover, federal law is clear that tribes have civil jurisdiction over
10 nonmembers that enter into consensual relationships with the tribe or its members.
11 *See, e.g., Montana v. United States*, 450 U.S. 544, 565, 101 S. Ct. 1245, 1258, 67 L.
12 Ed. 2d 493 (1981). The Muckleshoot Tribal Court has jurisdiction over the
13 dissolution between Muckleshoot member Mrs. Turpen and the Plaintiff.

14 Plaintiff’s argument that the Treaty of Westphalia somehow divests
15 Muckleshoot of its inherent authority was also not included with his motion and is
16 meritless. Plaintiff provides no case law support for the application of the Treaty of
17 Westphalia to an Indian Tribe. In fact, Counsel for the Defendants were unable to
18 locate any case law that applies the Treaty of Westphalia. It is completely irrelevant
19 and newly raised and that portion of the reply brief should be stricken.

20 Dated this 11th day of April, 2023.

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CERTIFICATE OF SERVICE

I certify that on April 11, 2023, the foregoing will be electronically filed with the Court’s electronic filing system, which will generate automatic service upon all parties registered to receive such notice.

/s/ Trent S.W. Crable
Trent S.W. Crable

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