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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Peabody Holding Company, LLC,
10 Administrator of the Peabody Western –
UMWA 401(k) Plan,

11 Plaintiff,

12 v.

13 Dianarose Black, an individual; and
14 Raelene Brown, Administrator of the Estate
of Roy Lee Black,

15 Defendants.

No. CV-12-08252-PCT-DGC

ORDER

16 Peabody Holding Company, LLC (“PHC”) filed a complaint in interpleader
17 seeking to have the Court adjudicate the competing claims of Defendants Dianarose
18 Black and Raelene Brown to the benefits of decedent Roy Lee Black that PHC holds as
19 the administrator and fiduciary of the Peabody Western – UMWA 401(k) Plan (“the
20 Plan”). Doc. 1. The Plan is an “employee pension benefit plan” governed by the
21 Employee Retirement Income Security Act (“ERISA”). *Id.*, ¶¶ 9-10. PHC asserts federal
22 question jurisdiction under 28 U.S.C. § 1331 pursuant to ERISA’s jurisdictional
23 provision in 29 U.S.C. § 1132(e). *Id.*, ¶ 5. Defendants are members of the Navajo
24 Nation, residing on Navajo land in Arizona, and the benefits were derived from the
25 employment of Robert Lee Black, also a Navajo, on Navajo land. Per the Court’s request
26 on April 3, 2013, the parties have filed briefs addressing whether the Court has subject
27 matter jurisdiction over this action and, if so, whether it should nonetheless stay or
28 dismiss the action in favor of tribal court jurisdiction. Docs. 16, 17.

1 **I. Background.**

2 Decedent Roy Lee Black was employed by Peabody Western Coal Company
3 (“Peabody”) on the Navajo Reservation. Doc. 1, ¶¶ 12-13. During his employment, Mr.
4 Black participated in and maintained a 401(k) account as part of Peabody’s “employee
5 pension benefit plan” (“the Peabody Western – UMWA 401(k) Plan” or “the Plan”). *Id.*,
6 ¶¶ 8-9. Mr. Black died on February 11, 2011, and, as of September 14, 2012, his account
7 contained a balance of \$66,452.88. *Id.*, ¶¶ 14-15. The governing provisions of the Plan
8 (the “Plan Instrument”) provide that, unless otherwise designated, the balance of a
9 decedent’s account will be paid out to his or her surviving spouse, and, if the decedent
10 has no surviving spouse or designees, it will be paid out to the administrator of his or her
11 estate. *Id.*, ¶¶ 16-20 (citing Plan Instrument provisions).

12 Mr. Black did not have a surviving spouse, and he named his daughter Dianarose
13 Black as his sole beneficiary on the Plan’s Designation Form. *Id.*, ¶¶ 4, 22. The Plan
14 Instrument allows for any persons who believe they are being denied a benefit to submit a
15 written claim to the Plan administrator. *Id.*, ¶ 25. Raelene Brown, the administrator of
16 Mr. Black’s estate, submitted a claim to PHC, contesting the validity of the Designation
17 Form and making a claim to the account balance on behalf of the estate. *Id.*, 25-26.

18 PHC has a fiduciary duty under ERISA to distribute the balance according to the
19 Plan Instrument. *Id.*, ¶ 30 (citing 29 U.S.C. § 1104(a)(1)(D)). PHC has received no other
20 claims to the account balance, and it has so far made no distributions pending resolution
21 of whether Defendant Black or Mr. Black’s estate, represented by Defendant Brown, is
22 the proper beneficiary. *Id.*, ¶¶ 29-32. PHC filed this action in interpleader, seeking to
23 pay the account balance into the Registry of the Court and to have the Court require
24 Defendants to submit their respective claims to the Court for determination. *Id.*, ¶¶ 38.

25 **II. Federal Court Jurisdiction.**

26 ERISA’s jurisdictional statement provides that “[e]xcept for actions under section
27 (a)(1)(B) [authorizing suits by participants or beneficiaries], the district courts of the
28 United States shall have exclusive jurisdiction of civil actions under this subchapter

1 brought by . . . [a] fiduciary, or any person referred to in section 1021(f)(1) of this title.”
2 29 U.S.C. § 1132(e)(1). PCH filed this action under §1132(a)(3), which authorizes a
3 fiduciary to bring a civil action “to obtain . . . appropriate equitable relief [and] to enforce
4 any provision of this subchapter or the terms of the plan.” 29 U.S.C. § 1132(a)(3)(B).
5 The Ninth Circuit has recognized that an interpleader action brought by a plan
6 administrator to ensure the proper disbursement of ERISA funds is as an equitable action
7 properly brought under § 1132(a)(3)(B). *See Aetna Life Ins. Co. v. Bayona*, 223 F.3d
8 1030, 1033-34 (9th Cir. 2000); *see also Estate of Strickland v. Strickland*, No. CV-12-
9 433-TUC-JGZ, 2013 WL 673513, at *4 (D. Ariz. Feb. 25, 2013) (“An interpleader action
10 is an equitable proceeding that permits a plan administrator to seek equitable relief to
11 enforce terms of an ERISA plan.”). Because ERISA grants federal court jurisdiction for
12 civil actions brought by a fiduciary, and PHC’s interpleader action is properly asserted
13 under § 1132(a)(3)(B), the Court has subject matter jurisdiction.

14 **III. Tribal Court Jurisdiction.**

15 **A. Principles of Comity and Exhaustion.**

16 Even where the federal court has subject matter jurisdiction over a claim involving
17 Indians on Indian land, principles of comity generally require that examination of the
18 existence and extent of a tribal court’s jurisdiction “be conducted in the first instance in
19 the Tribal Court itself.” *Nat’l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471
20 U.S. 845, 856 (1985). “[T]he federal policy supporting tribal self-government directs a
21 federal court to stay its hand in order to give the tribal court a full opportunity to
22 determine its own jurisdiction.” *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1987)
23 (quotation marks and citation omitted). *National Farmers* articulated three exceptions to
24 this requirement: (1) “where an assertion of tribal jurisdiction is motivated by a desire to
25 harass or is conducted in bad faith,” (2) “where the action is patently violative of express
26 jurisdictional prohibitions,” and (3) “where exhaustion would be futile because of the
27 lack of an adequate opportunity to challenge the court’s jurisdiction.” 471 U.S. at 857,
28 n. 21 (internal quotation marks and citations omitted).

1 Defendant Black did not submit briefing on the jurisdictional issue. Defendant
2 Brown contends that the Court should dismiss or stay this action to allow the Navajo
3 tribal court to determine its own jurisdiction. Doc. 16 at 6, 10. She argues that this is
4 appropriate because (1) the dispute is between Navajo family members arising from
5 events on the Navajo Reservation, (2) proper distribution of the account balance
6 implicates issues of Navajo law and custom, and (3) the Navajo probate court has
7 jurisdiction over other matters related to Mr. Black’s estate. *Id.* at 2-9. PHC does not
8 argue that Defendant’s assertion of tribal court jurisdiction is in bad faith, nor that
9 exhaustion in tribal court would be futile. Rather, it argues that requiring exhaustion in
10 tribal court would be “patently violative of [ERISA’s] express jurisdictional
11 prohibitions,” and would “serve no purpose other than delay.” Doc. 17 at 2 (quoting
12 *National Farmers*, 471 U.S. at 857, n. 21; *Nevada v. Hicks*, 533 U.S. 353, 369 (2001)).

13 **B. Would Tribal Court Jurisdiction Violate Jurisdictional Prohibitions?**

14 Section 1132(e)(1) of ERISA states:

15 Except for actions under subsection (a)(1)(B) of this section,
16 the district courts of the United States shall have exclusive
17 jurisdiction of civil actions under this subchapter brought by
18 the Secretary or by a participant, beneficiary, fiduciary, or
19 any person referred to in section 1021(f)(1) of this title. State
20 courts of competent jurisdiction and district courts of the
21 United States shall have concurrent jurisdiction of actions
22 under paragraphs (1)(B) and (7) of subsection (a) of this
23 section.

24 29 U.S.C. § 1132(e)(1). This grant of “exclusive jurisdiction,” which applies to this
25 interpleader action initiated by an ERISA fiduciary, would appear to preclude tribal court
26 jurisdiction. It also appears to invoke *National Farmers’* second exception to the
27 exhaustion requirement – that tribal court jurisdiction would patently violate an express
28 jurisdictional prohibition. Defendant’s arguments to the contrary are not persuasive.

29 Defendant Brown argues on the basis of *United States v. Plainbull*, 957 F.2d 724
30 (9th Cir. 1992), that the principles underlying the exhaustion rule apply even where the
31 statutory basis for an action contains “exclusive jurisdiction” language. Doc. 16 at 7, 7
32 n. 1. In *Plainbull*, the Bureau of Indian Affairs (“BIA”) filed an action in federal court

1 seeking to recover grazing fees on behalf of the Crow Tribe from tribal members who
2 had allowed their livestock to trespass on tribal lands. 957 F.2d at 725. The BIA asserted
3 federal court jurisdiction under 28 U.S.C. § 1355. *Id.* at 726. Section 1355 states that
4 “[t]he district courts shall have original jurisdiction, exclusive of the courts of the States,
5 of any action or proceeding for the recovery or enforcement of any fine, penalty, or
6 forfeiture . . . incurred under any Act of Congress, except matters within the jurisdiction
7 of the Court of International Trade under section 1582 of this title.” 28 U.S.C. § 1355(a).
8 The Ninth Circuit affirmed the district court’s dismissal of the action in favor of tribal
9 court exhaustion based on the district court’s finding that the alleged trespasses were
10 essentially an internal tribal matter and that principles of comity required the BIA to seek
11 resolution in tribal court. 957 F.2d at 725, 727. In reaching this conclusion, the Ninth
12 Circuit addressed whether § 1355 gave the federal courts exclusive jurisdiction, thus
13 precluding tribal court jurisdiction. *Id.* at 726-27. The Court of Appeals reasoned that
14 the plain language of § 1355 “only grants the district court original jurisdiction ‘exclusive
15 of the courts of the States,’ not exclusive of all other courts that would otherwise have
16 had jurisdiction.” *Id.* at 726. It went on to state that “[s]ince a tribal court is not a state
17 court, we hold that it does not fall within the exclusive jurisdiction provision of section
18 1355.” *Id.*

19 *Plainbull* does not support Defendant Brown’s position. Section 1132(e)(1) of
20 ERISA does not state that the federal courts have original jurisdiction “exclusive of the
21 courts of the States,” thus implicitly preserving the possibility of tribal court jurisdiction.
22 Rather, § 1132(e)(1) unequivocally states that “the district courts of the United States
23 shall have *exclusive jurisdiction of civil actions under this subchapter brought by . . . [a]*
24 *fiduciary.*” 28 U.S.C. § 1132(e)(1) (emphasis added). Importantly, the Ninth Circuit
25 stated in *Plainbull* that if it were to find that the relevant statute “confers exclusive
26 jurisdiction to the federal courts in the instant case,” it would be “compelled to reverse
27 [the district court’s abstention] for abuse of discretion.” 957 F.2d at 726.

28 Defendant Brown cites *Elliot v. White Mountain Apache Tribal Court*, 566 F.3d

1 842, 848 (9th Cir. 2009), for the proposition that if tribal court jurisdiction is “colorable”
2 or “plausible” the exception does not apply and exhaustion of tribal court remedies is
3 required. Doc. 16 at 7, n. 1. The Court does not find *Elliot* helpful to Defendant Brown.
4 *Elliot* addressed a fourth exception to the exhaustion requirement recognized in *Hicks*,
5 533 U.S. at 369, – that the exhaustion rule does not apply “when it is ‘plain’ that tribal
6 court jurisdiction is lacking, so that the exhaustion requirement ‘would serve no purpose
7 other than delay.’” 566 F.3d at 847. The reasoning in *Elliot* is clear. If tribal court
8 jurisdiction is “colorable” or “plausible,” it cannot be “plain” that the tribal court lacks
9 jurisdiction. In this case, however, the relevant statutory provision confers “exclusive
10 jurisdiction” on the federal courts, making “plain” that the tribal court lacks jurisdiction.¹

11 Defendant Brown emphasizes a Navajo Nation Supreme Court case that affirmed
12 Navajo jurisdiction to oversee the disbursement of ERISA funds where the claimants
13 were all Navajos and the life insurance policy belonged to a Navajo decedent pursuant to
14 her work for a company on Navajo land. Doc. 16 at 3 (citing *MacDonald v. Ellison*, 7
15 Nav. R. 429, 432 (1999)). But Defendant Brown acknowledges that the Navajo Supreme
16 Court found that ERISA did not apply to that case. *Id.* The applicability of ERISA to the
17 sole question of whether Mr. Black validly designated Defendant Black as his beneficiary
18 in the current case is not meaningfully in dispute. Defendant Brown also argues that
19 ERISA does not preempt tribal law. Doc. 16 at 4. Again, that is not the question before
20 the Court. Jurisdiction is not being suggested in this Court because ERISA preempts
21 tribal law, but because Congress has specifically declared that federal district courts have
22 exclusive jurisdiction over ERISA actions such as this.

23 Defendant Brown’s citations to additional cases are also not persuasive. In *United*
24 *States v. Tsosie*, 92 F.3d 1037, 1041 (10th Cir. 1996), the United States argued on the

25
26 ¹ The second and fourth exceptions to the exhaustion requirement appear to
27 overlap. When the second exception applies – where the action in the tribal court would
28 patently violate express jurisdictional prohibitions – the fourth exception will never apply
because the lack of tribal court jurisdiction will be plain. That is the situation in this case.
The fourth exception nonetheless remains relevant. Even if there is no express
jurisdictional prohibition, courts must ask whether a lack of tribal court jurisdiction is
plain for some other reason, so that exhaustion would serve no purpose other than delay.

1 basis of 28 U.S.C. § 1345, which gives the federal courts original jurisdiction over civil
2 actions brought by the United States, that the exhaustion rule did not apply to a trespass
3 and ejectment action the government initiated over tribal land. The court disagreed,
4 citing a number of Supreme Court cases for the proposition that original jurisdiction in
5 the federal courts does not preclude concurrent jurisdiction in other tribunals. *Id.* at
6 1041-42 (citing cases). In affirming that comity required the United States to exhaust its
7 remedies in tribal court, the Tenth Circuit found it significant that the relevant dispute
8 was between Indians over rights in Indian country. *Id.* at 1043. Defendant argues that
9 the same kind of dispute exists here. Doc. 16 at 8. But *Tsosie* was not an ERISA case,
10 and it did not deal with an exclusive jurisdiction clause. The analysis in *Tsosie* simply
11 does not apply where, as here, the applicable statutory provision precludes concurrent
12 jurisdiction.

13 Defendant Brown's citations to *Prescott v. Little Six, Inc.*, 897 F.Supp. 1217 (D.
14 Minn. 1995), and *Prescott v. Little Six, Inc.*, 387 F.3d 753 (8th Cir. 2004), do not compel
15 a different result. The district court opinion merely held that the "exclusive jurisdiction"
16 provision in § 1132(e)(1) did not bar the tribal court from adjudicating the question of
17 whether a valid ERISA plan existed, not that the federal courts do not have exclusive
18 jurisdiction over ERISA actions otherwise subject to § 1132(e)(1). *Prescott*, 897 F.Supp.
19 at 1222. The Eighth Circuit opinion is in accord. It found that where the tribal court had
20 conclusively determined that no ERISA plan existed because the tribal corporation had
21 not created one pursuant to relevant tribal laws, there could be no controversy to which
22 ERISA could apply. *Prescott*, 387 F.3d at 758. Neither case held that where, as here, the
23 existence of an ERISA plan is not in dispute, the exhaustion rule applies to an action
24 brought by a fiduciary under § 1132(a)(3) despite the express language in § 1132(e)(1).

25 *Geroux v. Assurant, Inc.*, No. 2:08-cv-00184, 2010 WL 1032648 (W.D. Mich.
26 March 17, 2010), to which Defendant's counsel cited at the scheduling conference, and
27 *Koopman v. Forest County Potawatomi Member Benefit Plan*, No. 06-C-163, 2006 WL
28 1785769 (E.D. Wis. June 26, 2006), are similar to the *Prescott* cases. *Geroux* remanded

1 a case to tribal court where the parties disagreed about whether the plaintiffs' cause of
2 action arose under ERISA. 2010 WL 1032648, at *18. *Koopman*, to which *Geroux*
3 cited, dismissed an action brought by tribal members where the plaintiffs had
4 characterized the case as a dispute over ERISA benefits, but the court found that "it is
5 clear from the filings [] it is anything but." 2006 WL 1785769, at *2. The court found
6 that preliminary issues such as a motion to disqualify the Tribe's counsel and a motion to
7 intervene from tribal members asserting claims under the Tribe's own constitution
8 presented it with "a paradigmatic opportunity to defer to the tribal court." *Id.*

9 Defendant Brown attempts to show that disposition of the benefit in this case
10 likewise implicates questions of tribal law and custom distinct from who is the proper
11 beneficiary of Mr. Black's account under ERISA. Doc. 16 at 4. The Court is not
12 persuaded. As Plaintiff argues, ERISA requires the fiduciary to distribute Plan benefits
13 according to the terms of the Plan Instrument. Doc. 17 at 7; *see* 29 U.S.C.
14 § 1104(a)(1)(D). Thus, the benefit must pass to Defendant Black if the Court finds that
15 Mr. Black designated her as his beneficiary; otherwise it must pass to Mr. Black's estate
16 represented by Defendant Brown. Doc. 17 at 7. No questions of tribal law or concepts of
17 "distributive justice" are implicated as Plaintiff argues (Doc. 16 at 5), and until the
18 ERISA action is resolved, the account is a non-probate asset not properly before the tribal
19 probate court. *Id.* at 6, 7.

20 In summary, the Court concludes that requiring tribal court exhaustion in this case,
21 where the only question is one over which the federal courts have "exclusive
22 jurisdiction," would be "patently violative of express jurisdictional prohibitions." *Nat'l*
23 *Farmers*, 471 U.S. at 857, n. 21. As a result, exhaustion in tribal court is not required.

24 **C. Alternative Grounds for Declining Abstention.**

25 Even absent a finding that the "exclusive jurisdiction" language in § 1132(e)(1)
26 constitutes an express jurisdictional prohibition against tribal court jurisdiction, the Court
27 finds further support on the basis of *El Paso Natural Gas Co. v. Neztosie*, 526 U.S. 473
28 (1999), that the exhaustion rule does not apply. *El Paso* supports the proposition that

1 exhaustion does not apply, even without express language, where a federal statute evinces
2 Congress's intent that specific kinds of actions be addressed in a uniform manner in
3 federal court. The plaintiffs in *El Paso* argued that principles of comity prevented the
4 defendant of numerous tort claims stemming from uranium production on the Navajo
5 reservation from removing cases from Navajo to federal court pursuant to the Price-
6 Anderson Act. The Price-Anderson Act provides for original jurisdiction in federal court
7 and removal from state court for claims relating to nuclear incidents. *Neztsosie*, 526 U.S.
8 at 484. It also contains a preemption provision, transforming all such claims into federal
9 actions. *Id.* The Supreme Court found on the basis of these provisions that Congress had
10 "expressed an unmistakable preference for a federal forum." *Id.* at 484-85. Although the
11 Act only provided for removal from state courts, not tribal courts, the Supreme Court
12 explained:

13 We are at a loss to think of any reason that Congress would
14 have favored tribal exhaustion. Any generalized sense of
15 comity toward nonfederal courts is obviously displaced by the
16 provisions for preemption and removal from state courts,
17 which are thus accorded neither jot nor tittle of deference.
The apparent reasons for this congressional policy of
immediate access to federal forums are as much applicable to
tribal-court as to state-court litigation.

18 *Id.* at 485-86. The Court concluded that the exhaustion rule did not apply to any putative
19 Price-Anderson Act claims and that removal was warranted. *Id.* at 487-88.

20 At least one district court case, *Vandever v. Osage Nation Enterprise, Inc.*, No. 06-
21 CV-380-GKF-TLW, 2009 WL 702776 (N.D. Okla. Mar. 16, 2009), has applied the
22 rationale of *Neztsosie* to ERISA and concluded that exhaustion does not apply to ERISA-
23 based claims. In *Vandever*, the plaintiffs filed an action in federal court against their
24 tribal employer and the Osage Nation alleging ERISA violations. 2009 WL 702776, at
25 *1. Defendants argued on the basis of *National Farmers, et al.*, that plaintiffs must first
26 pursue their claims in tribal court. *Id.* at *4. The court did not agree. *Id.* at *5. It cited
27 to the fact that ERISA, like the Price-Anderson Act, preempts state law claims (*see* 29
28 U.S.C. § 1144), and to the Supreme Court's finding that

1 The purpose of ERISA is to provide a uniform regulatory
2 regime over employee benefit plans. To this end, ERISA
3 includes expansive preemption provisions, see ERISA § 514,
4 29 U.S.C. § 1144, which are intended to ensure that employee
5 benefit plan regulation would be “exclusively a federal
6 concern.”

7 *Id.* at *5 (quoting *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004) (internal citation
8 omitted)). The court concluded that “[g]iven the preemptive nature of ERISA and the
9 express purpose of Congress to provide a uniform regulatory scheme over employee
10 benefit plans, . . . abstention would be inappropriate.” *Id.* Unlike here, *Vandever*
11 pertained to claims brought by beneficiaries to recover benefits under the terms of a plan
12 and thus fell under the second part of § 1132(e)(1), which gives the federal courts
13 concurrent jurisdiction with the states, not the provision which gives federal courts
14 “exclusive jurisdiction.” As Defendant points out, however, the fact that the court found
15 abstention inappropriate even where federal jurisdiction was not exclusive further
16 supports withholding abstention here. *See* Doc. 17 at 3, n. 1.

17 *Neztsosie* and *Vandever* provide persuasive alternative grounds for finding that the
18 principles of comity requiring tribal court exhaustion do not apply in this case.

19 **IT IS ORDERED:**

- 20 1. This action shall remain in federal court.
21 2. The Court will set a case management conference by separate order.

22 Dated this 29th day of May, 2013.

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24 _____
25 David G. Campbell
26 United States District Judge
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