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Attorneys for Defendants
The Honorable Leroy Not Afraid and
The Honorable Sheila Wilkinson Not Afraid

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

MICHAEL F. LAFORGE,
Plaintiff,

v.

JANICE GETS DOWN, NATASHA J.
MORTON, LEROY NOT AFRAID,
SHEILA WILKINSON NOT AFRAID
Defendants.

No. CV-17-48-BLG-BMM-TJC

**JUDICIAL DEFENDANTS
RESPONSE TO ORDER TO SHOW
CAUSE (DOC. 26)**

Complaint Filed: May 5, 2017
Trial Date: None Set

Defendants the Honorable Leroy Not Afraid and the Honorable Sheila Wilkinson Not Afraid (collectively, the “Judicial Defendants”), by their undersigned counsel, respectfully respond to the Court’s November 11, 2017, Order to Show Cause (Doc. 26), and state as follows:

A. Judicial Defendants' Motion to Dismiss (Doc. 20) is Unopposed and Should Be Granted, and the Plaintiff's "Motion for Prayer for Relief" (Doc. 24) Should Not Be Deemed Well Taken

On July 19, 2017, the Judicial Defendants moved to dismiss the complaint pursuant to Rules 12(b)(1) and 12(b)(6). (Doc. 20). As the Judicial Defendants explained in their brief in support, the Complaint is facially defective in at least four ways:

- Plaintiff has failed to plead any basis for federal jurisdiction, and the Court does not in fact have jurisdiction over the Judicial Defendants.
- Judicial immunity precludes a damages award against judges.
- Tribal sovereign immunity precludes review of the actions of the Judicial Defendants acting in their official capacities as Crow tribal judges.
- The Complaint does not state or include the elements of any cognizable claim.

(Doc. 21).

The Plaintiff has failed to respond to this motion. The only filing he has made subsequent to the motion is styled as a "Motion for Prayer for Relief." (Doc. 24). This "motion" does not include a complete sentence, asks for no relief, fails to state any cognizable claim for relief, and does not respond to any of the bases for dismissal set forth in the Judicial Defendants' motion to dismiss. (Doc. 24).

To the extent the "Motion for Prayer for Relief" has any relevance to the motion to dismiss or the current procedural posture of the case, it is the statement "Tribal Courts: Leroy & Sheila Not Afraid; 25 Million." (Doc. 24 at 1). The Plaintiff thereby admits that he is asserting his claims against the Judicial Defendants in their capacities as officials of "Tribal Courts," confirming that the motion to dismiss must be granted for lack of jurisdiction, judicial immunity and tribal sovereign immunity. *See* cases and discussion in Doc. 21 at 5-15; *see also Lewis v. Clarke*, 137 S. Ct. 1285, 1291 (2017) ("Defendants in an official-capacity action may assert sovereign immunity"); *Cook v. AVI Casino Enterprises, Inc.*, 548

F.3d 718, 727 (9th Cir. 2008) (same). The Plaintiff's filing constitutes a "binding judicial admission[]" as to the character and nature of his claims." *Kerr v. St. Vincent Healthcare*, No. CV 15-29-BLG-SPW-JCL, 2015 WL 9595467, at *4 (D. Mont. Oct. 21, 2015), *report and recommendation adopted*, No. CV 15-29-BLG-SPW-JCL, 2016 WL 30658 (D. Mont. Jan. 4, 2016). Accordingly, and for the reasons set forth in the moving brief, the Judicial Defendants respectfully submit that their still-unopposed motion to dismiss be granted.

B. Plaintiff's "Motion Submit [sic] Support of Pleading Evidence" (Doc. 13) Should Not Be Deemed Well-Taken

The Judicial Defendants object to Plaintiff's July 5, 2017 "Motion Submit [sic] Support of Pleading Evidence" (Doc. 13), and respectfully suggest that the motion should not be deemed well-taken. Even read generously, Plaintiff's motion is entirely defective. Neither the Federal Rules of Civil Procedure nor the Federal Rules of Evidence contemplate this motion. Plaintiff makes no specific request for relief from the Court. It is impossible to tell what the Plaintiff is attempting to do in this motion. The motion does not provide any "evidence," explain why the submission of "evidence" is appropriate now, or explain what the "evidence" is offered to support. The Plaintiff did not file a brief in support of his motion, requiring its denial. "The moving party's failure to file a brief shall be deemed an admission that the motion is without merit." Local Rule 7.1(d)(1)(A).

For all of these reasons, the Judicial Defendants did not respond to the motion initially, and submit now that the motion should not be deemed well-taken.

C. Plaintiff's Motion to File Exhibits (Doc. 14) Should Not Be Deemed Well-Taken

On July 5, 2017, Plaintiff filed a "Motion to File Exhibits," with documentary evidence attached. (Doc. 14). But the Plaintiff does not explain what

he is filing the exhibits for.¹ There is no proper purpose for filing these exhibits at this stage of the proceedings, and no purpose is offered. This motion, too, literally does not ask for any relief or state any comprehensible basis for relief. All it does is list documents. The Plaintiff again did not file a brief in support of his motion, also requiring its denial. Local Rule 7.1(d)(1)(A).

For all of these reasons, the Judicial Defendants did not respond to the motion to file exhibits initially, and respectfully submit now that the motion should not be deemed well-taken.

Conclusion

For all of the foregoing reasons, the Honorable Leroy Not Afraid and the Honorable Sheila Wilkinson Not Afraid object to each of Plaintiff's "motions" at docket numbers 13, 14 and 24, and respectfully request the Court to deem them not well-taken. The Honorable Leroy Not Afraid and the Honorable Sheila Wilkinson Not Afraid further again request that their motion to dismiss be granted pursuant to Rules 12(b)(1) and 12(b)(6), and the complaint dismissed with prejudice.

¹ Some of the documents submitted with the motion are orders and pleadings from the underlying Tribal Court divorce case. Doc. nos. 15, 15-2, 15-3, 15-4 at pages 5-6 and 16-43, 15-5 at page 3, and 15-6 at pages 2-3. The Court could, were it so inclined and, counterfactually, a proper purpose offered, take judicial notice of these orders and pleadings from the Tribal Court case. *See, e.g., McVay v. Allied World Assur. Co.*, 650 F. App'x 436, 438 n.1 (9th Cir. 2016); *see also Burbank-Glendale-Pasadena Airport Authority v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998). Documents nos. 15-1, 15-4 at pages 1-4 and 7-15, and 15-6 at pages 1 and 4-6 are not subject to judicial notice.

Dated: November 17, 2017

Respectfully submitted,

DENTONS US LLP

By: /s/ Samuel E. Kohn

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The Honorable Sheila Wilkinson Not Afraid

CERTIFICATE OF SERVICE

L.R. 5.2(B)

I hereby certify that on this 17th day of November, 2017, a copy of the foregoing document was served on the following persons by the following means:

1, 3 CM/ECF

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