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7 **ATTORNEY FOR DEFENDANT WHITE CLAY**

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

FIRST INTERSTATE BANCSYSTEM, INC.  
and FIRST INTERSTATE BANK,

Plaintiff,

and

ALVIN NOT AFRAID, JR., CARLSON GOES  
AHEAD, RUDOLPH KNUTE OLD CROW,  
RONALD ARNESON, FRANK WHITE CLAY,  
SHAWN BACK BONE, and CROW TRIBE OF  
INDIANS,

Defendants

No. CV 19-10-BLG-SPW-TJC

**SECOND MOTION TO QUASH  
TEMPORARY RESTRAINING ORDER**

COMES NOW Defendant Frank WHITE CLAY, Speaker of the Crow Legislature, though his attorney, Thor A. Hoyte of Celadon Law & Business Group, and does hereby respectfully request this Court to Quash its Temporary Restraining Order granted in favor of Alvin Not Afraid and against Plaintiff because it will cause irreparable harm.

**SERVICE AND SUPPLEMENTAL MOTION**

Defendant WHITE CLAY finds it necessary to supplement his MOTION submitted at 3:52 p.m. Friday February 8, 2018, *49 minutes after the Court issued the Temporary Restraining Order*. WHITE CLAY was prepared to submit a "Response" to NOT AFRAID's Motion for Temporary Restraining Order but had to quickly change direction after the Court's actions. Therefore, WHITE CLAY begs the Court's indulgence with what he is styling this "Second Motion to Quash"

**SECOND MOTION TO QUASH TEMPORARY RESTRAINING  
ORDER**

1 so he may further address the deep concerns of the issued Temporary Restraining Order and  
2 asks the Motions be taken together as a whole.

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4 WHITE CLAY was not provided any notice from NOT AFRAID and his counsel. WHITE CLAY is  
5 known to both, and is readily available. WHITE CLAY's counsel is known to both, and is readily  
6 found. The first time WHITE CLAY became aware of the Motion for Temporary Restraining  
7 Order was when, by courtesy of the Plaintiff, the documents were emailed to counsel for WHITE  
8 CLAY and GOES AHEAD. That email arrived at 2:12 p.m. February 7, 2019, *25 hours before  
the Court issued an Order and without input from the parties.*

9 NOT AFRAID and his counsel continue to flaunt court rules in this Court and at Tribal Court.  
10 NOT AFRAID and his counsel continue to assert, baldly and without basis, "facts" without leave  
11 to controvert by opposing parties.

12 CROW LAW AND ORDER CODE

13 As Tacitus counseled, "Truth is confirmed by inspection and delay; falsehood by haste and  
14 uncertainty." WHITE CLAY respectfully urges the Court to reconsider and quash its mislaid  
15 Order granting a Temporary Restraint against First Interstate Bank. The Court has, with the best  
16 of intentions, placed its judgement before that of the Crow people and its elected body, the  
17 Crow Legislature, where the Legislature urged the interpleading of the funds. The decision to  
18 urge the interpleading of the funds was not done, at Tacitus as warned, with "haste" but with  
calculated necessity to protect the limited moneys of the Crow Tribe.

19 Moreover, the Crow Tribe is perfectly capable of governing its own affairs without intervention  
20 from non-Tribal fora. In answering this Court's concern for Crow members that may be without  
21 heat and electricity during this cold Montana winter, the Legislature simply points to the Crow  
22 tribal code. The Legislature is unsure if NOT AFRAID or his counsel have read the Crow tribal  
23 code, and will not assume each willfully mislead this Court. Title 20 (Utilities) of the Crow Law  
24 and Order Code addresses comprehensively the extended process for utility shut offs and  
25 specifically, how shut offs **CANNOT** happen during the Winter months or when temperatures

1 reach dangerous levels.  
2

3 TRIBAL EXHAUSTION OF REMEDIES

4 The Court must also consider the comity it pays the Tribal Court in this matter. It is without  
5 argument comity shall be granted between the separate court systems. However, comity is not  
6 the same thing as full faith and credit, and in this case the difference is a dangerous one.

7 “Principles of comity require federal courts to dismiss or to abstain from deciding claims over  
8 which tribal court jurisdiction is colorable, provided that there is no evidence of bad faith or  
9 harassment.” *Marceau v. Blackfeet Hous. Auth.*, 540 F.3d 916, 920 (9th Cir. 2008) *emphasis*  
10 *added*. If the tribe has jurisdiction, tribal remedies must first be exhausted. *Atwood v. Fort Peck*  
11 *Tribal Court Assiniboine*, 513 f.3d 943, 948 (9th Cir. 2008). The exhaustion requirement  
12 provides “the forum whose jurisdiction is being challenged the first opportunity to evaluate the  
13 factual and legal bases for the challenge.” *Nat’l Farmers Union Ins. Companies v. Crow Tribe of*  
14 *Indians*, 471 U.S. 845, 856 (1985).

15 In this matter, the Court has inserted itself into an ongoing court case at Tribal Court. The Tribal  
16 Court has not made a final order in the matter. A final order is the logical predicate to  
17 determining whether the Tribal Court options are exhausted. Not only is the Tribal Court matter  
18 not exhausted because there is no final order, the Tribal Court case itself involves a judge who  
19 recused himself after signing his order, who has been served a notice of removal to be heard by  
20 the Judicial Ethics Board, the orders themselves in the Tribal Court case are challengeable on  
21 their face, and a Special Judge is being appointed to hear the matter. Clearly the matter is  
22 ongoing, and as stated above, the Crow Tribe is capable of governing its own matters, and has  
23 the right and ability to do so without second guessing from non-tribal fora.

24 Clearly there is no final order, and therefore no tribal exhaustion, of the underlying matter at  
25 Tribal Court on which this Court relied in its Order for Temporary Injunction. In making its Order,  
this Court has, though with obvious good intentions, relied on “misleading” claims by NOT  
AFRAID.

PRAYER FOR RELIEF

THEREFORE, Defendant WHITE CLAY does respectfully ask this court to QUASH its ORDER granting Temporary Injunctive relief.

SIGNED this 9th day of February 2019.

/s/ Thor A. Hoyte  
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