

Heather D. Whiteman Runs Him (*pro hac vice*)  
Melody L. McCoy (*pro hac vice*)  
NATIVE AMERICAN RIGHTS FUND  
1506 Broadway  
Boulder, CO 80302  
Phone: (303) 447-8760  
Fax: (303) 443-7776  
heatherw@narf.org  
mmccoy@narf.org

Wesley James Furlong (MT Bar No. 42771409)  
NATIVE AMERICAN RIGHTS FUND  
745 West 4th Ave, Suite 502  
Anchorage, AK 99501  
Phone: (907) 276-0680  
Fax: (907) 276-2466  
wfurlong@narf.org

*Attorneys for Defendants Unknown Members of Crow  
Tribal Health Board, Hon. Chief Justice Kenneth Pitt,  
and Hon. Judges Dennis Bear Don't Walk and Michelle Wilson*

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

**BIG HORN COUNTY ELECTRIC  
COOPERATIVE, INC.,**

**Plaintiff,**

**v.**

**ALDEN BIG MAN, UNKNOWN  
MEMBERS OF THE CROW TRIBAL  
HEALTH BOARD, HONORABLE  
CHIEF JUSTICE KENNETH PITT,  
HONORABLE JUDGES DENNIS  
BEAR DON'T WALK AND  
MICHELLE WILSON**

**Defendants.**

**Case No. CV 17-00065-SPW-TJC**

**TRIBAL DEFENDANTS'  
MEMORANDUM IN SUPPORT  
OF THEIR MOTION FOR  
JUDGMENT ON THE  
PLEADINGS PURSUANT TO  
RULE 12(C) WITH RESPECT  
TO TRIBAL HEALTH BOARD  
DEFENDANTS**

## **BACKGROUND AND STATEMENT OF THE CASE**

### **I. The Crow Tribe and The Tribal Law And Order Code**

The Crow Tribe is a federally-recognized Indian Tribe, occupying the Crow Indian Reservation (“Reservation”). *See* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 84 Fed. Reg. 1,200, 1201 (Feb. 1, 2019) (list of federally recognized Tribes); *see also* 2001 Constitution and Bylaws of the Crow Tribe of Indians (available at <https://www.ctlb.org/wp-content/uploads/2015/07/2001-constitution.pdf>).

Title 20, Utilities, is a duly enacted provision of the Crow Tribal Law and Order Code (“CTLOC”). Section 20-1-110(2) of CTLOC Title 20 provides in relevant part that no termination of residential electric service on the Reservation may occur between November 1 and April 1, except with specific prior approval of the Crow Tribal Health Board.

The Crow Tribe Legislative Branch established the current Crow Tribal Health Board as an instrumentality of the Crow Tribe government. *See* CLB10-01, a Resolution adopted unanimously by the Crow Tribe Legislative Branch on January 25, 2010, and signed into law by the Crow Tribe Executive Branch Chairman on February 17, 2010. Bill No. CLB10-01, A BILL FOR AN ACT ENTITLED “AN ACT ESTABLISHING A CROW TRIBAL HEALTH BOARD AND ESTABLISHING AUTHORITY, DUTIES, AND RESPONSIBILITIES OF

THE APSAALOOKE NATION HEALTH BOARD” (available at <https://www.ctlb.org/wp-content/uploads/2015/09/CLB-10-01-Health-Board.pdf>).

## **II. The Tribal Court Action Underlying This Federal Court Action**

Underlying this federal court action is a civil action for money damages brought in Crow Tribal Court by a Crow Tribe member, Alden Big Man, against Big Horn County Electric Cooperative (“BHCEC”) under CTLOC Section 20-1-110(2), for violations of that Section. It is undisputed that in January 2012, BHCEC disconnected Big Man’s residential electric service. Big Man alleges that any notice given by BHCEC failed to comply with CTLOC Section 20-110(2), and that no prior approval of the Crow Tribal Health Board was obtained before disconnection occurred.

The Crow Tribal Court dismissed Big Man’s claims for lack of jurisdiction but the Crow Tribal Court of Appeals reversed on the grounds that tribal jurisdiction was plausible, but a complete record for properly determining such jurisdiction was lacking. The Crow Tribal Court of Appeals remanded to the Crow Tribal Court for the development of a proper record.

## **III. The Proceedings in This Federal Court Action to Date**

Before any further proceedings occurred in Crow Tribal Court, BHCEC brought this action seeking declaratory and injunctive relief on the grounds that exhaustion of tribal remedies had occurred and that the Tribal Court lacks

jurisdiction over Big Man's claims against it. Compl., ECF No. 1. In addition to Big Man, BHCEC named as defendants the Crow Tribal Court of Appeals Justices and Unknown Members of the Crow Tribal Health Board (collectively, the "Tribal Defendants"). *Id.*

Big Man and the Tribal Defendants moved to dismiss this action, primarily on the ground that exhaustion of tribal remedies had not occurred. See Mots. to Dismiss and Brs. in Supp., ECF Nos. 31, 32, 33 and 34. As additional and alternative grounds for dismissal, Tribal Defendants also asserted that this Court lacks jurisdiction over Unknown Members of the Crow Tribal Health Board ("Tribal Health Board Defendants") and claims against them under Rule 12(b)(1), on the grounds of sovereign immunity from suit. Mot. to Dismiss and Br. in Supp., ECF Nos. 33, 34 and Reply, ECF No. 45). Tribal Defendants further moved to dismiss Tribal Health Board Defendants under Rule 12(b)(6), for failure to state a claim upon which relief can be granted. *Id.*

Following briefing on the dismissal motions, and a Magistrate's Findings and Recommendations Report (ECF No. 48), on September 25, 2018 this Court denied dismissal on the sole ground that BHCEC appeared to have exhausted its tribal remedies. Order, ECF No. 55. The Court's Order did not address the alternative two grounds for dismissal raised by Tribal Defendants. Nevertheless, Tribal Defendants duly filed their Answer to the Complaint on October 9, 2018. Answer,

ECF No. 60.

A preliminary pretrial conference was conducted by the Magistrate on December 20, 2018, after which the Magistrate issued a Scheduling Order (ECF No. 76). During the preliminary pretrial conference, which was attended by Counsel for all parties, Counsel for Tribal Defendants expressly raised the point that this Court's September 25, 2018 Order did not address Tribal Defendants' alternative two grounds for dismissal. Under the agreed-upon post-preliminary pretrial conference Scheduling Order, Motions to Amend Pleadings were due on or before March 15, 2019. No party has filed an amended pleading in this action. The next deadline set by the Scheduling Order is June 21, 2019, which is the date by which Plaintiff must disclose any Damages or Liability Experts. Order at 1.

### **SUMMARY OF ARGUMENT**

Judgment on the pleadings under Rule 12(c) as to Tribal Health Board Defendants is appropriate here because this Court lacks jurisdiction over Tribal Health Board Defendants and, thus, any claims against them, due to the Crow Tribe's sovereign immunity from suit, which extends to officials of the Tribe, such as Tribal Health Board Defendants, acting within their official capacities, and BHCEC has not alleged any waiver of such immunity in this case. Additionally, and alternatively, dismissal of Tribal Health Board Defendants is proper because BHCEC's Complaint lacks any allegation that Tribal Health Board Defendants

have acted or threatened to act, and BHCEC's requests for relief do not state any claim or specify any requested relief against Tribal Health Board Defendants. Accordingly, this Court should enter judgment on the pleadings against BHCEC's Complaint and dismiss this action as to Tribal Health Board Defendants.

## **ARGUMENT**

### **I. This Motion Is Timely and Proper**

A Rule 12(c) motion is timely and proper with respect to both already-asserted but as yet unaddressed alternative defenses of Tribal Health Board Defendants: (1) lack of jurisdiction due to sovereign immunity from suit; and, (2) failure to state a claim. Rule 12(c) provides in its entirety that, "After the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). "A Rule 12(c) motion challenges the legal sufficiency of the opposing party's pleadings... as a whole." *McCollough v. Minn. Lawyers Mut. Ins. Co.*, No. CV 09-95, 2011 WL 4972017, at \*2 (D. Mont. July 27, 2011) (citation omitted). "When brought by the defendant, a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is a 'means to challenge the sufficiency of the complaint after an answer has been filed.'" *Doornek v. City of Billings*, No. CV 04-108, 2007 WL 9709927, at \*1 (D. Mont. Feb. 8, 2007) (citation omitted).

It is well-established that a “Rule 12(c) motion for judgment on the pleadings is the functional equivalent of a Rule 12(b)(6) motion to dismiss for failure to state a claim, except it is filed after the answer.” *Anderson v. Bank of Am., N.A.*, CV 17-161, 2018 WL 6068425, at \*2 (D. Mont. Nov. 20, 2018) (citation omitted). “The Court must ‘inquire whether the complaint’s factual allegations, together with all reasonable inferences, state a plausible claim for relief.’” *McCullough*, 2011 WL 4972017, at \*2 (citations omitted). Accordingly, having filed their Answer, Tribal Defendants’ failure to state a claim defense with respect to Tribal Health Board Defendants is properly raised in this Rule 12(c) motion.

Under Rule 12(h)(3), a defense of lack of subject matter jurisdiction may be raised “at any time,” and it is common practice to assert a “lack of jurisdiction due to sovereign immunity from suit” defense in a Rule 12(c) motion. *See, e.g., Crow Allottees Ass’n v. U.S. Bureau of Indian Affairs*, No. CV 14-62, 2015 WL 4041303, at \*5, (D. Mont. June 30, 2015), *aff’d*, 705 Fed. App’x 489 (9th Cir. 2017) (federal officials argue sovereign immunity from suit in Rule 12(c) motion); *Mont. Env’tl. Info. Ctr. v. Oppen*, No. CV12-34, 2013 WL 485652, at \*1-4 (D. Mont. Jan. 22, 2013), *aff’d*, 766 F.3d 1184 (9th Cir. 2014) (state official asserts state’s Eleventh Amendment immunity from suit in Rule 12(c) motion); *Wisniewski v. Town of Columbus*, CV-09-28, 2009 WL 10701744, at \*3-4 (D.

Mont. Nov. 18, 2009) (in a Rule 12(c) motion, town argues that it “is an arm and instrumentality of the State of Montana and as such is immune from suit under the Eleventh Amendment to the U.S. Constitution”); *Gerow v. Washington*, 383 Fed. App’x 677, 678 (9th Cir. 2010) (affirming district court’s granting of Rule 12(c) judgment for motion on the pleadings “because the individual defendants are entitled to legislative immunity from suit”); *accord Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (noting that defendants properly raised immunity issues in their answer and in their Rule 12(c) motion); *see also Gilbertson v. Quinault Indian Nation*, Case No. C11-5380, 2011 WL 13193280, at \*1 (W.D. Wash. Oct. 24, 2011), *aff’d*, 495 Fed. App’x 779 (9th Cir. 2012) (Tribe moves for dismissal of complaint “pursuant to Fed. R. Civ. P. 12(c) on the basis that sovereign immunity bars Plaintiff’s claims”). Accordingly, Tribal Defendants’ sovereign immunity defense with respect to Tribal Health Board Defendants likewise is timely and properly asserted in this Rule 12(c) motion.

## **II. The Standards of Review For This Motion**

Consistent with Rule 12(b)(1), Tribal Health Board Defendants’ sovereign immunity defense which is jurisdictional may be facial, in which “the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction,” or factual, in which “the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction.” *Safe*



*Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004), *cert. denied*, 544 U.S. 1018 (2005). Facial challenges are treated as “any other motion to dismiss on the pleadings for lack of jurisdiction,” and determined only with reference to whether “the complaint alleges ‘sufficient factual matter, accepted as true to state a claim to relief that is plausible on its face.’” *Terenkian v. Republic of Iraq*, 694 F.3d, 1122, 1131 (9th Cir. 2012) (citations omitted) (reviewing motion to dismiss for lack of subject matter jurisdiction that involved foreign nation’s sovereign immunity from suit).

“A cause of action may be dismissed under [Rule 12(c)’s standard of review] either when it asserts a legal theory that is not cognizable as a matter of law, or if it fails to allege sufficient facts to support an otherwise cognizable legal claim.” *Ouellette v. Viacom Int’l, Inc.*, No. CV 10-133, 2012 WL 850921, at \*1 (D. Mont. Mar. 13, 2012), *aff’d*, 671 Fed. App’x 972 (9th Cir. 2016) (citations omitted). In considering such a dismissal motion, “the Court must take all of the factual allegations in the complaint as true, and it is not bound to accept as true legal conclusions couched as factual allegations.” *Kortlander v. Cornell*, 816 F. Supp. 2d 982, 988-89 (D. Mont. 2011) (citations omitted); *see also Forsman v. United Fin. Cas. Co.*, 966 F. Supp. 2d 1091, 1096 (D. Mont. 2013) (in determining a Rule 12(c) motion, “a court is not required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences”);

*Shipley v. Whelan*, No. CV 11-133, 2012 WL 1424738, at \*2 (D. Mont. Apr. 24, 2012) (citations omitted) (when considering a Rule 12(c) motion, “the tenet that a court must accept as true” all of a complaint’s allegations is inapplicable to “legal conclusions and threadbare recitals of the elements of a cause of action, supported by mere conclusory statements”).

### **III. Tribal Health Board Defendants’ Sovereign Immunity from Suit Precludes This Court’s Jurisdiction Over Them, and There Is Not Even an Allegation of A Waiver of Such Immunity**

At this stage of this litigation, Tribal Health Board Defendants’ primary argument is that BHCEC’s complaint is facially insufficient to invoke this Court’s jurisdiction over them, or any claims against them. In particular, BHCEC fails to allege any waiver of the Tribal Health Board Defendants’ sovereign immunity from suit.<sup>1</sup>

“As sovereign entities, Indian tribes may not be sued in federal court absent an unequivocal waiver of sovereign immunity” from suit. *Gilbertson*, 2011 WL 13193280, at \*2 (analyzing tribe’s motion for dismissal under Rule 12(c) on the

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<sup>1</sup> In the event that BHCEC invokes a purported waiver, Tribal Defendants expressly reserve their right to raise a *factual* challenge to such an allegation. *See, e.g., Timothy v. Oneida Cty.*, No. 4:14-cv-00362, 2015 WL 2036825, at \*5 (D. Idaho Apr. 30, 2015) (on motion for partial dismissal, defendants expressly do not seek qualified immunity as to part of claim, “but reserve the right to raise it, if necessary, once the record is more fully developed”); *see also Missud v. Oakland Coliseum Joint Venture*, No. 12-02967, 2013 WL 812428, at \*10 (N.D. Cal. Mar. 5, 2013) (on motion to dismiss, defendants expressly reserve governmental immunity argument, “and instead will assert it as an affirmative defense if Plaintiff’s claims survive the pleadings”).

basis of tribal sovereign immunity from suit). Tribal sovereign immunity from suit extends to protect tribal officials acting in their official capacities and within the scope of their authority. *See Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718, 727 (9th Cir. 2008); *Linneen v. Gila River Indian Cmty.*, 276 F.3d 489, 492 (2002); *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 479 (9th Cir. 1985). “A suit against the Tribe and its officials ‘in their official capacities is a suit against the tribe.’” *Miller v. Wright*, 705 F.3d 919, 927-28 (9th Cir. 2013), *cert. denied*, 570 U.S. 905 (2013) (citation omitted). “A plaintiff cannot circumvent tribal immunity by the simple expedient of naming an officer of the Tribe as a defendant, rather than the sovereign entity.” *Cook*, 548 F.3d at 727 (internal quotations and citation omitted).

As with other assertions of sovereign immunity from suit, defeat of a sovereign immunity defense asserted in a Rule 12(c) motion requires a plaintiff to demonstrate the requisite “unequivocal waiver” of immunity. *See, e.g., Unkeowannulack v. Table Mountain Casino*, No. CV F 07-1341, 2007 WL 4210775, at \*7 (E.D. Cal. Nov. 28, 2007) (citations omitted); *Crow Allottees Ass’n*, 2015 WL 4041303, at \*5 (burden to establish waiver of tribal sovereign immunity asserted in Rule 12(b)(1) motion is on plaintiff). Either Congress must have authorized the suit, or the tribe must have waived its immunity. *Kiowa Tribe v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998); *Bodi v. Shingle Springs Band of*

*Miwok Indians*, 832 F. 3d 1011, 1016 (9th Cir. 2016) (citations omitted). Authorizations and waivers must be express; they cannot be implied. *Bodi*, 832 F. 3d at 1016; *accord Miller*, 705 F.3d at 926 (citations omitted) (congressional abrogations of tribal sovereign immunity “must be unequivocally expressed in explicit legislation” and “may not be implied”); *Kescoli v. Babbitt*, 101 F.3d 1304, 1310 (9th Cir. 1996) (waivers by tribe must be unequivocal and explicit). Moreover, in this Circuit, “[t]here is a strong presumption against [finding a] waiver of tribal sovereign immunity.” *Demontiney v. United States*, 255 F.3d 801, 811 (9th Cir. 2001) (citation omitted).

The Crow Tribe is a federally recognized sovereign that possesses immunity from suit. “The Tribe appears in the Federal Register as a recognized tribe.” *Boricchio v. Chicken Ranch Casino*, No. 1:14-CV-818, 2015 WL 3648698, at \*3 (E.D. Cal. June 9, 2015); *see* 84 Fed. Reg. at 1201. “[T]he inclusion of a tribe on the Federal Register list of recognized tribes is generally sufficient to establish entitlement to sovereign immunity” from suit. *Munoz v. Barona Band of Mission Indians*, 2018 WL 1245257, at \*2 (S.D. Cal. Mar. 8, 2018) (citations omitted); *accord Yurok Tribe v. Resighini Rancheria*, No. 16-cv-02471, 2018 WL 550233, at \*1 (N.D. Cal. Jan. 25, 2018), *appeal filed*, No. 18-15309, 2018 WL 550233 (9th Cir. Feb. 26, 2018).

BHCEC does not allege or “dispute that this is sufficient to establish the Tribe’s entitlement to sovereign immunity.” *Boricchio*, 2015 WL 3648698, at \*3.

Nor does BHCEC allege or dispute that Tribal Health Board Defendants are officials of the Crow Tribe. *See* Bill No. CLB 10-01, A Bill for an Act Entitled “An Act Establishing a Crow Tribal Health Board and Establishing Authority, Duties, and Responsibilities of the Apsaalooke Nation Health Board” (available at <https://www.ctlb.org/wp-content/uploads/2015/09/CLB-10-01-Health-Board.pdf>).

The Apsaalooke Nation Health Board is an arm of the Crow Tribe. *See Wilhite v. Awe Kualawaache Care Ctr.*, CV 18-80, 2018 WL 5255181, at \*2 (D. Mont. Oct. 22, 2018); *Cook*, 548 F.3d at 725-726. As a matter of Crow Tribal law, CLB 10-01 sets forth the duties and powers of the Apsaalooke Nation Health Board, all of which relate directly to services and programs of the Crow Tribal government, advocacy and coordination with federal and state healthcare policy and healthcare service-related program issues, and generally promoting the health and welfare of Crow Tribal citizens.

Nor does BHCEC allege that Tribal Health Board Defendants have acted in any capacity other than officially. *C.f. Miller*, 705 F.3d at 928 (plaintiffs allege defendant tribal officials are not protected by sovereign immunity because they acted outside the scope of their authority); *see also Romanella v. Hayward*, 933 F. Supp. 163, 167 (D. Conn. 1996), *aff’d*, 114 F.3d 15 (2nd Cir.

1997) (rejecting plaintiff’s attempt at oral argument on Rule 12(b)(1) and Rule 12(c) motions to recast her claims against tribal officials as being against them in their individual capacities, where such argument was “unsupported by the allegations in her complaint”).

BHCEC makes no allegation that its “claims here are ... brought under any federal law that abrogates tribal immunity.” *Mitchell v. Tulalip Tribes of Wash.*, 740 Fed. App’x 600, 601 (9th Cir. 2018), *petition for cert. docketed*, No. 18-970, \_\_U.S.\_\_ (Jan. 28, 2019). BHCEC makes no allegation that Tribal Health Board Defendants’ immunity has been waived. *See, e.g., Saroli v. Agua Caliente Band of Cahuilla Indians*, No. 10-CV-1748, 2010 WL 4788570, at \*2 (S.D. Cal. Nov. 17, 2010) (example of instance where a plaintiff at least attempted to allege a waiver of tribal sovereign immunity). The absence of such an allegation in a complaint fails to meet Rule 8(a)(1)’s basic requirements for jurisdictional allegations. *See Whittaker v. Bronk*, No. 18cv122, 2018 WL 1135539, at \*1 (D. N.M. Feb. 26, 2018).

Because BHCEC has not alleged either congressional authorization of claims in this action against Tribal Health Board Defendants, or a waiver by the Tribe of their immunity from suit, BHCEC “has not met [its] burden of establishing subject matter jurisdiction.” *Fontanez v. MHA Nation - Three Affiliated Tribes*, No. CV 11-148, 2012 WL 928281, at \*1 (D. Mont. Mar. 19,

2012) (granting dismissal pursuant to Rule 12(b)(1)). “Pursuant to [their] immunity, the Court lacks jurisdiction” over any action against the Tribal Health Board Defendants and their dismissal should be granted. *Gilbertson*, 2011 WL 13193280, at \*4.

**IV. Additionally, and Alternatively, BHCEC’S Failure to State A Claim Against Tribal Health Board Defendants Requires Their Dismissal.**

Tribal Defendants’ primary failure-to-state-a-claim argument is that BHCEC’s complaint fails to allege facts sufficient to state a claim against Tribal Health Board Defendants.<sup>2</sup> When analyzing this ground for dismissal, the Rule 12(b)(6) review standard “is informed by Rule 8(a)(2).” *In Re Estate of Ostby v. Yellowstone Cty.*, No. CV 17-124, 2019 WL 960023, at \*1 (D. Mont. Jan. 24, 2019) (citation omitted); *see also Gillian v. Cali. Dep’t of Corr. & Rehab.*, No. 1:15-cv-00037, 2015 WL 1916417, at \*1 (E.D. Cal. Apr. 27, 2015) (“failure to comply with Rule 8(a)(2) may result in dismissal of the complaint for failure to state a claim on which relief can be granted”).

Rule 8(a)(2) requires a “short and plain statement of the claim showing that the pleader is entitled to relief” in order to give a defendant a fair notice of what the claim is and the grounds upon which it is based. *Anderson*, 2018 WL 6068425, at

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<sup>2</sup> Tribal Defendants argue in the alternative that BHCEC has not and cannot assert any legal theory or claim that is cognizable as a matter of law against Tribal Health Board Defendants. Without such a cognizable theory or claim, Tribal Health Board Defendants must be dismissed under Rule 12(b)(6).

\*2 (citation omitted) (considering a failure to state a claim defense asserted in a Rule 12(c) motion). Rule 8(a)(2) requires “more than bare allegations” of unlawful action or conduct *Heart K Land & Cattle Co. v. Long*, No. CV 12-162, 2013 WL 6916257, at \*3 (D. Mont. Dec. 10, 2013) (citations omitted) (considering a Rule 12(c) motion under Rule 12(b)(6)’s review standard). Complaints must “include concise but complete factual allegations describing the conduct and events which underlie . . . claims.” *Sanchez v. Kramer*, No. 1:15-cv-01868, 2018 WL 4520964, at \*3 (E.D. Cal. Sept. 20, 2018); *see also McKnight v. Nev. Dep’t of Health & Human Servs.*, No. 3:17-cv-00483, 2018 WL 4610872, at \*4 (D. Nev. June 20, 2018) (Rule 8(a)(2) requires a description of the “specific actions of each” official against whom claims are brought).

BHCEC’s Complaint does not satisfy this very basic pleading standard. It does not allege any wrongful actions or conduct—or, indeed, any actions or conduct at all—taken by Tribal Health Board Defendants. *See Winnemem Wintu Tribe v. U.S. Forest Serv.*, No. 2:09-cv-01072, 2014 WL 3689699, at \*6 (E.D. Cal. July 24, 2014) (dismissing a complaint under Rule 12(b)(6) and Rule 8(a)(2) where it failed to allege that agency failed to comply with statutory or regulatory requirements, “much less proffer factual matter supporting the plausibility of such a claim”); *accord Herrington v. Dr. Elliot-Blakesly*, No. 2:13-cv-0948, 2014 WL 1896683 at \*5 (D. Or. May 9, 2014) (“Because the complaint does not allege any wrongdoing



on the part of any of these defendants, the court concludes that [plaintiff] fails to state a claim as against these . . . individuals”).

The Complaint here contains only a single reference to Tribal Health Board Defendants—in the listing of the Parties. Without any further allegations, this warrants their dismissal. *Ebinger v. Office(s) of Atty. Gen.*, Civ. No. 09-00116, 2009 WL 2025250, at \*2 (D. Haw. July 10, 2009) (citation omitted) (“Where a complaint alleges no specific act or conduct on the part of the defendant and the complaint is silent as to the defendant except for his name appearing in the caption, the complaint is properly dismissed”); *accord Silicon Knights, Inc. v. Crystal Dynamics, Inc.*, 983 F. Supp. 1303, 1308 (N.D. Cal. 1997) (citations omitted) (“courts have consistently held that, where the complaint names a defendant in the caption but contains no allegations indicating how the defendant violated the law or injured the plaintiff, a motion to dismiss in regard to that defendant should be granted”). Because the Complaint is devoid of any allegations that Tribal Health Board Defendants did anything, or of what basis there is for any relief against them, the Complaint fails to state a claim for which relief can be granted regarding the Tribal Health Board Defendants.

## CONCLUSION

For the reasons set forth above in support of their Motion for Judgment on the Pleadings under Rule 12(c), Tribal Defendants’ motion should be granted.

Respectfully submitted this 19th day of April, 2019.

/s/ Heather D. Whiteman Runs Him

Heather D. Whiteman Runs Him

Melody L. McCoy

PRO HAC VICE COUNSEL FOR THE  
TRIBAL DEFENDANTS

/s/ Wesley James Furlong

Wesley James Furlong

LOCAL COUNSEL FOR TRIBAL  
DEFENDANTS

Attorneys for Defendants Unknown  
Members of Crow Tribal Health Board,  
Hon. Chief Justice Kenneth Pitt, and Hon.  
Judges Dennis Bear Don't Walk and  
Michelle Wilson

**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1(d)(2), I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points, is double spaced except for footnotes and for quoted and indented material. Pursuant to Local Rule 7.1(d)(2)(E), I certify that the word count calculated by Microsoft Word for Windows is 3,810 words, excluding the caption and certificates of service and compliance.

/s/ Heather D. Whiteman Runs Him

PRO HAC VICE COUNSEL FOR  
THE TRIBAL DEFENDANTS

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 19th day of April, 2019, a true and correct copy of the foregoing TRIBAL DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO RULE 12(C) WITH RESPECT TO TRIBAL HEALTH BOARD DEFENDANTS was served upon the following via the Court's electronic filing system:

James E. Torske  
TORSKE LAW OFFICE, P.L.L.C.  
314 North Custer Avenue  
Hardin, MT, 59034  
Phone: (406) 665-1902  
torskelaw@tctwest.net

Michael G. Black  
BLACK LAW OFFICE  
44 North Last Chance Gulch, Suite 8  
P.O. Box 1311  
Helena, MT 59624  
Phone: (406)546-0017  
blacklaw@blackfoot.net

Kathryn Seaton  
Montana Legal Services Association  
616 Helena Avenue, Suite 100  
Helena, MT 59601  
Phone: (406) 442-9830 x 142  
kseaton@mtlsa.org

/s/ Heather D. Whiteman Runs Him