UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

Mashkikii-Boodawaaning (Medicine Fireplace) Inc.,

Plaintiff,

v.

Chippewa Valley Agency, Ltd., d/b/a Chippewa Valley Bank,

Defendant.

Case No. 23-cv-086 WMC/SLC

PLAINTIFF MEDICINE FIREPLACE'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

I. INTRODUCTION

Plaintiff Mashkikii-Boodawaaning (Medicine Fireplace) Inc. ("Medicine Fireplace") squarely alleged Defendant Chippewa Valley Agency, Ltd., d/b/a Chippewa Valley Bank's ("CVB") discriminatory intent in the Amended Complaint—CVB refuses to open a bank account for Medicine Fireplace on account of its religious practices and the race of its members. *E.g.*, First Am. Compl. ("FAC") ¶ 43. While CVB brings a motion to dismiss on the basis that discriminatory intent was not alleged; ironically, CVB *admits* its own discriminatory intent in its motion. CVB specifically concedes that it did not open a banking account for Medicine Fireplace because Medicine Fireplace makes lawful sacramental use of peyote. In other words, CVB declined to open an account for Medicine Fireplace because it is a chapter of the Native American Church. This admission dooms

CVB's motion—denying an organization equal treatment because it is a Native American Church chapter is the essence of both religious and racial discrimination.

In order to muddle its fatal concession, CVB misleads the Court on the applicable law and strays beyond the four corners of the Complaint. First, CVB prematurely invokes the *McDonnell-Douglas* burden shifting framework. The Supreme Court has been clear—this burden shifting framework is inapposite at the motion to dismiss stage. *Swierkiewicz v. Sorema N.A.,* 534 U.S. 506, 510 (2002) ("The prima facie case under *McDonnell Douglas*, however, is an evidentiary standard, not a pleading standard."). Indeed, at this procedural stage, Medicine Fireplace has not had any discovery and cannot possibly know the universe of similarly situated non-Native American Church clients for which CVB has opened an account. Accordingly, at this stage, conclusory allegations of discriminatory intent suffice and, not only has discriminatory intent been pled by Medicine Fireplace, but it has been openly admitted by CVB in its own brief, as discussed above.

Moreover, even if the *McDonnell-Douglas* framework did apply (and it does not), CVB's arguments rely on new "facts" that are not alleged (and that are also completely false). For instance, CVB creates a strawman and argues that Medicine Fireplace must allege the bank has opened an account for another organization that uses "a Schedule I controlled substance." Yet, such an organization would not be similarly situated to Medicine Fireplace because Medicine Fireplace makes no use of any Schedule I controlled substance. The DEA has specifically exempted peyote used in bona fide religious ceremonies of the Native American Church from being scheduled at all. 22 C.F.R. § 1307.31. Accordingly, Medicine Fireplace's activities have absolutely nothing to do with

any "Schedule I" drugs. Stating that Medicine Fireplace's activities involve "Schedule I" drugs is highly offensive and equivalent to saying that the Catholic Church contributes to the "delinquency of minors" by supplying them "liquor," or suggesting that health clinics prescribing pain killers are engaged in "trafficking" opioids.[1] The law permits children to take communion, permits distribution of prescription drugs, and specifically permits the sacramental peyote use by the Native American Church. CVB would clearly open a bank account for the Catholic Church or for a clinic, and to deny Medicine Fireplace a bank account is intentional discrimination.

CVB's next strawman argument is that its conduct is not racial discrimination because adherence to the Native American Church religion does not require being Native American (an argument that essentially concedes CVB's religious discrimination). Yet, contrary to CVB's suggestion, membership in the Native American Church *is* limited to Native Americans. Moreover, the genocide of Native Americans has historically been justified by the non-Christian religious practices of Native Americans. Indeed, to permit businesses to discriminate against Native American Church chapters due to their legally protected and sacramental use of peyote would nullify the intent of Congress that no Native American be discriminated against or penalized based on their use of peyote for bona fide religious ceremonies. 42 U.S.C. § 1996a. Therefore, membership in the Native American Church is a proxy for Native American race, and the refusal to open a bank account for

[1] CVB's offensive language even includes a stray reference to the completely irrelevant issue of marijuana—a reference that is blasphemous to Medicine Fireplace. *See* FAC ¶ 31.

Medicine Fireplace on the grounds that it is a chapter of the Native American Church is racial discrimination.

With respect to religious discrimination, CVB argues vaguely that "additional oversight and reporting requirements" would be associated with Medicine Fireplace's account. Def.'s Br. at 12. This is a "fact" found nowhere in the Amended Complaint. To the contrary, the complaint expressly alleges that CVB's insistence that any supervision would be required is pretext for discrimination. Indeed, no reason exists at all that any "additional oversight" or "reporting" would be required to open an account for a religious organization that is not alleged to have violated any law. CVB's denial of Medicine Fireplace's bank account application was discriminatory. Medicine Fireplace's amended complaint alleges substantial factual information establishing this, and as such the Court should deny CVB's motion to dismiss.

II. BACKGROUND

Native Americans have engaged in the sacramental use of peyote for thousands of years. First Amended Complaint ("FAC") ¶ 19. Since arriving 600 years ago, European Americans have cited religious differences with Native Americans as a justification for racial discrimination. *Id.* ¶ 14. Religious differences were used to justify the dispossession of Native lands, and these reasons continued to be cited over the succeeding hundreds of years to justify policies seeking to erase Native culture. *Id.* ¶¶ 15-18. The sacramental use of peyote specifically was specifically targeted as part of that cultural erasure. *Id.* ¶ 5. The Native American Church was founded in response to threats targeting the sacramental use of peyote. *Id.* ¶ 22. Congress eventually granted the Native American Church legal

protections for the sacramental use of peyote, and today federal and state law clearly permits Native American members of the Native American Church to engage in the sacramental use of peyote. *Id.* ¶¶ 23-27.

Medicine Fireplace is a chapter of the Native American Church of North America ("NACNA"). FAC at ¶ 7. It was founded to provide a place of worship for Native Americans in order to protect and nurture tribal cultures, customs, ceremonies, and religious beliefs. *Id*. Medicine Fireplace's leadership and membership is exclusively composed of Native Americans. *Id.* ¶¶ 5, 30. As a part of its religious and spiritual tradition, Medicine Fireplace administers spiritual rituals that involve the sacramental use of peyote. *Id.* ¶ 7. Medicine Fireplace is legally entitled to administer the peyote sacrament *Id.* ¶ 32.

Medicine Fireplace applied for a commercial checking account with CVB and submitted all necessary documents. FAC at ¶¶ 37-38. CVB denied Medicine Fireplace's application, citing Medicine Fireplace's lawful use of peyote. *Id.* ¶ 41. After it requested reconsideration and was again denied, Medicine Fireplace's counsel sent a letter to CVB expressing concerns that CVB had unlawfully discriminated against it. *Id.* ¶¶ 46-47. Medicine Fireplace explained that the sacramental use of peyote was integral to their cultural practices and that federal law clearly permits their use. *Id.* CVB argued that Medicine Fireplace's peyote use justified CVB's denial because of "Chippewa Valley Bank's limited resources to assure proper control is being provided and proper handling of an account by a customer" and that "Federal and State regulation requirements and financial risks of [Chippewa Valley Bank] including but not limited to ongoing responsibilities of a bank after an account is open . . ." *Id.* ¶¶ 48-49. CVB did not specify

what regulatory requirements it would be subject to, nor what "ongoing responsibilities" it would have. *Id.* Accordingly, these justifications for CVB's denial of banking services are not legitimate, but instead are pretext for racial and religious discrimination. *See id.* ¶¶ 49, 52, 67, 78.

III. LEGAL STANDARDS

In order to survive a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), a complaint does not need detailed factual allegations, but it must contain sufficient factual matter to state a claim that is plausible on its face. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the sufficiency of a complaint, not to decide the merits of the case. *See Anchor Bank, FSB v. Hofer*, 649 F.3d 610, 614 (7th Cir.2011). The court must assume the allegations of the complaint are true and construe them in the light most favorable to the plaintiff. *See Viamedia, Inc. v. Comcast Corp,* 951 F.3d 429, 454 (7th Cir. 2020).

IV. ARGUMENT

A. The Amended Complaint States a Claim for Racial Discrimination

Medicine Fireplace states a claim for relief under 42 U.S.C. § 1981 because it alleges that CVB engaged in intentional racial discrimination and provides specific information to support its allegation. "To state a claim under § 1981, plaintiff must allege facts in support of the following propositions: (1) he is a member of a racial minority; (2)

defendants intended to discriminate on the basis of race; and (3) the discrimination deprived plaintiff of one or more rights enumerated in § 1981, such as the making and enforcing of a contract." *Black Agents & Brokers Agency, Inc. v. Near N. Ins. Brokerage, Inc.*, 409 F.3d 833, 837 (7th Cir. 2005). Propositions one and three are undisputedly met in this case. *See Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wisconsin, Inc.*, 991 F.2d 1249, 1257 (7th Cir. 1993) (recognizing racial animus against Native Americans as basis for liability under the Civil Rights Act); *Amber Pyramid, Inc. v. Buffington Harbor Riverboats, L.L.C.*, 129 F. App'x 292, 295 (7th Cir. 2005) (finding that a corporation can "assume[] an 'imputed racial identity' from its shareholders."). Therefore, the focus of CVB's motion is whether Medicine Fireplace has adequately alleged proposition two—discriminatory intent. CVB, however, misleads the Court as to the proper standard, prematurely invoking *McDonnell Douglas*.

1. The *McDonnell Douglas* Framework Does Not Apply

The *McDonnell Douglas* framework is a method of proving discrimination that asks whether a *prima facie* case of discrimination has been established by the plaintiff, shifts the burden to the defendant to articulate a nondiscriminatory reason for the alleged discrimination, and then shifts the burden back to the plaintiff to show that the nondiscriminatory reason is pretext. *Bourbon v. Kmart Corp.*, 223 F.3d 469, 471 (7th Cir. 2000) (*citing McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 36 L. Ed. 2d 668, 93 S. Ct. 1817 (1973). This framework, however, applies only after discovery when the parties have had an opportunity to take discovery on the reasons for the alleged discrimination. *See Petrovic v. Enter. Leasing Co. of Chi.*, LLC, 513 F. App'x 609, 610-11 (7th Cir. 2013)

(reversing grant of motion to dismiss because defendant's argument were "misplaced" as "the type of evidence that [the plaintiff] would need to submit at summary judgment if he proceeded under the indirect method of proof under *McDonnell Douglas* . . .") (emphasis added).

Indeed, it is particularly inappropriate to apply *McDonnell Douglas* at this stage of the litigation because *McDonnell Douglas* may not even apply at trial. As CVB acknowledges, *McDonnell Douglas* is merely one way to prove intent. Def.'s Br. at 6. *McDonnell Douglas* permits indirect evidence of discriminatory intent and, as such, is an ***alternative*** to providing direct evidence of intent. *Hoffman v. Caterpillar, Inc.*, 256 F.3d 568, 574 (7th Cir. 2001). Here, as discussed elsewhere, Medicine Fireplace has directly alleged intent, and CVB even directly concedes its intent in its brief. Accordingly, Medicine Fireplace may never have to satisfy the *McDonnell Douglas* framework at all. To the extent the *McDonnell Douglas* becomes relevant later, "the Supreme Court and the Seventh Circuit have made clear, *McDonnell Douglas* is an evidentiary standard for summary judgment, ***not*** a hurdle plaintiffs must clear on a Rule 12(b)(6) motion to dismiss." *Williams v. State Farm Mutual Automobile Insurance Co.*, 609 F. Supp. 3d 662, 678 (N.D. Ill. 2022) (emphasis added).

CVB's cases are not to the contrary. *O'Neill v. Gourmet Sys. Of Minn., Inc.* is a summary judgment case. 213 F. Supp. 2d 1012, 1018 (W.D. Wis. 2002). *Mir* is a case concerning causation. In *Mir v. State Farm Mut. Auto. Ins. Co*., the plaintiff only alleged that the defendant "kn[ew] about [his] East-Indian/Pakistani race" and was "motivated by discrimination against him" when it denied him insurance benefits. 847 F. App'x 347, 350

(7th Cir. 2021). Beyond this, the plaintiff "offered no other information," and failed to provide facts to permit the inference of "but-for causation." *Id.* *Labor One, Inc. v. Staff Management Solutions, LLC*, is a case in which the plaintiff itself raised the *McDonnell Douglas* framework. 2019 U.S. Dist. LEXIS 130030, at *24 (N.D. Ill. Aug. 5, 2019). As it concerned, allegations of intent, the court ruled that a single allegation that African-Americans were referred to as "those people" was not sufficient to nudge the claim across the line of plausibility. *Id.* at *23. In contrast here, Medicine Fireplace's Amended Complaint contains ample factual allegations of both intent and causation, as discussed below.

2. Discriminatory Intent Has Been Adequately Alleged

Medicine Fireplace alleges facts to support the proposition that CVB intended to discriminate on the basis of race. At this point in the litigation, Medicine Fireplace faces a "minimal pleading standard." *Tamayo v. Blagojevich*, 526 F.3d 1074, 1084 (7th Cir. 2008) Medicine Fireplace is required only to allege what type of discrimination occurred, by whom, and when. *Swanson v. Citibank, North America*, 614 F.3d 400, 405 (7th Cir. 2010); s*ee also Williams v. State Farm Mut. Auto. Ins. Co*., 609 F. Supp. 3d 662, 677 (N.D. Ill. 2022) (denying motion to dismiss a section 1981 claim because "the Plaintiffs have sufficiently explained the who, what, and when in a way that presents a story that holds together"). In the Seventh Circuit, "all a complaint has to say" is "I was [discriminated against] because of my race." *Bennett v. Schmidt*, 153 F.3d 516, 518 (7th Cir. 1998).

Medicine Fireplace has met these pleading requirements. Medicine Fireplace identifies the type of discrimination (racial), by whom (certain employees named in the

Amended Complaint), and when (in connection with its application for a commercial checking account in March 2022). *See, e.g.*, FAC ¶¶ 41-57. Medicine Fireplace's allegations are detailed and specific, and plausibly allege both intent and causation. Medicine Fireplace specifically notes that a supervisor at CVB's local branch refused to open an account "due to the organization's peyote use." FAC ¶ 43. This use of peyote is part of the religious and cultural practices of CVB's Native American members and is completely lawful and legal. FAC ¶ 43; *see also id.* ¶¶ 19-20, 24-27, 68. To deny a Native American religious organization the ability to open a bank account due to ***legal activity*** is the essence of discrimination. Notably, not only is this intent and causation alleged in the Amended Complaint, but is also admitted in CVB's brief. CVB concedes on the first page of its brief both that it denied Medicine Fireplace's application because of the use of peyote, and that the use of peyote by Medicine Fireplace is completely legal. Def.'s Br. at 1. To permit discrimination against an entity in a protected class on the basis of lawful activity intimately tied to race would undermine the force of all civil rights laws.

3. Native American Church Membership is a Proxy For Race

Perhaps sensing the futility of arguing lack of racial discrimination while discriminating on the basis of a cultural and religious practice specific to Native Americans, CVB futilely argues "not all Native Americans are members of the [Native American Church of North America, or] NACNA" and that peyote use is not synonymous with Native American race. Def.'s Br. at 9-10. While it is true that not all Native Americans are members of the NACNA, ***all members of the NACNA are Native American***. *See Peyote Way Church of God, Inc. v. Thornburgh*, 922 F.2d 1210, 1216 (5th

Cir. 1991) (noting that members of NACNA must have at least one-quarter degree of Native American blood); *see also* FAC ¶ 30 (noting that all of Medicine Fireplace's members are Native American). Accordingly, Medicine Fireplace's affiliation with the NACNA is absolutely a proxy for the Native American race of its membership.[2]

As the Seventh Circuit explained in *McWright v. Alexander*, "[w]e have warned that [a company] cannot be permitted to use a technically neutral classification as a proxy to evade the prohibition of intentional discrimination. An example is using gray hair as a proxy for age: there are young people with gray hair (a few), but the 'fit' between age and gray hair is sufficiently close that they would form the same basis for invidious classification." 982 F.2d 222, 228 (7th Cir. 1992). *See also Olzman v. Lake Hills Swim Club, Inc.,* 495 F.2d 1333 (2d Cir. 1974) (remanding case to district court with instructions to consider "whether the supposedly neutral rule was nothing more in reality than a smokescreen to cover the actual intent and effect or whether it was factually grounded in non-racial motivations").

Here, the "fit" between the Native American race and the sacramental use of peyote is identical. Indeed, federal law is premised on the fact that the sacramental use of peyote is inextricably linked to the Native American race. *See* 42 U.S.C. § 1996a(b)(1) ("[T]he

[2] CVB cites cases regarding non-Native American use of peyote. *United States v. Boyll*, 774 F. Supp. 1333, 1338 (D.N.M. 1991); *State v. Mooney*, 2004 UT 49, ¶ 21, 98 P.3d 420. The use of peyote by non-Native Americans is not alleged in the Amended Complaint, and is highly controversial and not allowed by the NACNA, as explained in *Peyote Way Church of God*, 922. F.2d 1210. As alleged in the Amended Complaint, NACNA is one of the most long-standing and well respected Native American Church organizations in the country, and is the organization with which Medicine Fireplace is affiliated. FAC ¶¶ 7, 32-33.

use, possession, or transportation of peyote ***by an Indian*** for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful . . . . ***No Indian*** shall be penalized or discriminated against on the basis of such use, possession or transportation [of peyote].") (emphasis added). The sacramental use of peyote is so tied to Native American racial identity that courts have found the government has an interest in protecting the sacramental use of peyote specifically by Native Americans. *See Peyote Way Church of God*, 922 F.2d at 1216 ("We hold that the federal [Native American Church] exemption allowing tribal Native Americans to continue their centuries-old tradition of peyote use is rationally related to the legitimate governmental objective of preserving Native American culture.").

Notably, Congress saw fit to specifically enact a statute to address Native American religious use of peyote *precisely because* Native Americans have historically been targeted with discrimination due to their religious practices generally, and religious use of peyote specifically. FAC ¶¶ 23-25. The historical justification for genocidal acts based on race—dispossession of land, massacres of women and children, abduction of children from their homes—were all justified on the basis of religious differences, including use of peyote. FAC ¶¶ 13-14. In order to repudiate this shameful history, Congress enacted a statute that specifically prohibits state and federal governments from discriminating against or penalizing Native Americans based on their use of peyote. 42 U.S.C. § 1996a. The judicial branch should not nullify this law on a practical level by allowing private business to discriminate and penalize Native Americans. *Cf. Shelley v. Kraeme*r, 443 U.S. 1 (1948)

(holding that enforcement by judicial branch of privately created racially restrictive real covenants is unconstitutional).

The close "fit" between the sacramental use of peyote and Native American racial identity is enough to draw an inference of racial discrimination, and this inference becomes increasingly persuasive in light of the fact that CVB has never cited a legitimate reason for denying Medicine Fireplace's application. CVB recognizes that citing Medicine Fireplace's use of peyote is not a legitimate reason in and of itself—there needs to be some additional reason that Medicine Fireplace's peyote use is relevant to its account application. To that end, the CEO of CVB claimed that CVB denied Medicine Fireplace's application because of "Chippewa Valley Bank's limited resources to assure proper control is being provided and proper handling of an account by a customer" and "Federal and State Regulation [sic] requirements and financial risks of [Chippewa Valley Bank] including but not limited to ongoing responsibilities of a bank after an account is open . . ." FAC at ¶¶ 48-49. Yet CVB did not cite a single statute, regulation, or other authority to support these claims. *Id.* The lack of statutory or regulatory support is unsurprising: There is no statute, regulation, or other authority that would somehow make Medicine Fireplace's peyote use relevant to the bank. Accordingly, CVB's CEO's argument are illusory pretext, and its motion must be denied.

For the first time in its motion to dismiss, Defendant claims Medicine Fireplace would create risks for CVB under the Bank Secrecy Act. This is not a legitimate reason to deny CVB's application; rather, it is further evidence of defendant's racial animus. The Bank Secrecy Act only requires CVB to file suspicious activity reports if it has reason to

suspect a customer is engaged in illegal activity. 31 C.F.R. § 1020.320. Defendant's invocation of the Bank Secrecy Act suggests that it believes Medicine Fireplace is disproportionately likely to engage in unlawful behavior. Given that Medicine Fireplace is by all accounts a law-abiding organization, CVB's suggestion that Medicine Fireplace is likely to engage in unlawful activity can only stem from gross stereotypes of Native Americans.

B. CVB Engaged in Intentional Religious Discrimination

Medicine Fireplace also adequately states a claim of religious discrimination under Wisconsin Statute § 106.52 because its amended complaint alleges that CVB discriminated against Medicine Fireplace because of its religious practices. Wisconsin law prohibits discrimination in places of public accommodation "because of . . . creed." Wis. Stat. § 106.52(3)(a)(1). CVB is a "public place of accommodation" as defined the law because it is a "place[] of business" where "services are available either free or consideration." Wis. Stat. § 106.52(1)(e)(1). And CVB's own brief in support of its motion to dismiss essentially concedes that CVB discriminated against Medicine Fireplace because of creed. In attempting to deny a racial discriminatory purpose, CVB asserted that the allegations in the amended complaint "support only one conclusion—that . . . [CVB] denied Medicine Fireplace's application because of Medicine Fireplace's use of peyote . . . ." Def. Br. at 9. The use of peyote is a fundamental attribute of Medicine Fireplace's religious practices. FAC ¶ 7. Accordingly, CVB's motion to dismiss the religious discrimination claim must also be denied.

Medicine Fireplace is an affiliated chapter in good standing with the Native American Church of North America. FAC ¶ 33. The Native American Church is the only organization legally allowed to administer the peyote sacrament. 21 C.F.R. 1307.31 (establishing the legality of peyote for "bona fide religious ceremonies ***of the Native American Church***") (emphasis added)). The corollary is that discrimination on the basis of lawful, sacramental peyote use is discrimination against, and only against, the Native American Church. This is more than the strong "fit" between grey hair and old age. *McWright*, 982 F.2d 228. Rather, there is a ***perfect*** "fit" between the lawful, sacramental use of peyote and the Native American Church.

The perfect fit between the religious custom and the religion distinguishes this case from the single case CVB cites in its motion to dismiss. In *Jalal v. Lucille Roberts Health Clubs Inc.*, the plaintiff, who wore a long skirt for religious reasons, was removed from a gym for refusing to follow its dress code, which prohibited long skirts. 254 F. Supp. 3d 602, 606-07 (S.D.N.Y. 2017), *vacated by settlement*, 2017 U.S. App. LEXIS 18798 (2d Cir. Aug. 29, 2017). The court held that applying a neutral dress code did not amount to religious discrimination because it affected all members, regardless of religion. By contrast, CVB's discriminatory denial of Medicine Fireplace's application based on its lawful, sacramental use of peyote is targeted at all adherents of a single religion. *Jalal* is further distinguishable because the gym had a legitimate, non-discriminatory purpose for its dress code. *Id.* at 608. By contrast, CVB has never been able to articulate a legitimate, non-discriminatory reason for denying Medicine Fireplace's application.

CVB's brief argues that Medicine Fireplace's creates "underwriting risks" or requires some additional "oversight" compared to other accounts. Def. Br. at 12 (internal citations omitted). These arguments are not based on any facts alleged in the Amended Complaint. To the contrary, the Amended Complaint specifically alleges that these arguments are false and a pretext for discrimination. FAC ¶¶ 49, 52. Indeed, given the legality and protected status of Medicine Fireplace's sacramental peyote use under federal and state law, CVB has not provided any plausible rationale for how Medicine Fireplace creates an underwriting risk or requires additional oversight. There is zero evidence that Medicine Fireplace is engaged in illegal activity or is disproportionately likely to do so in the future.

Courts recognize that "discrimination on the basis of religion . . . is 'based on archaic and overbroad assumptions, . . . deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic, and cultural life.'" *Welsh v. Boy Scouts of Am.*, 742 F. Supp. 1413, 1433 (N.D. Ill. 1990) (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 625 (1984)). "As with other forms of discrimination, religious discrimination stems from a long history of persecution[—]including the putting to death[—]of individuals based solely on their religious beliefs." *Id.* CVB's fear of Medicine Fireplace's sacramental peyote use is based on archaic assumptions about Native American religious practices as somehow being deviant (as evidenced by CVB's reference to the irrelevant and not analogous issue of marijuana).

Fortunately, Congress has wisely recognized the harm that such assumptions have caused to Native Americans and their full participation in social life, and thus offer

protection to members of the Native American Church. 42 U.S.C. § 1996a. The Court should likewise recognize that CVB's discrimination against Medicine Fireplace because of its peyote use is religious discrimination that undermines the dignity of Medicine Fireplace and its members. CVB's motion to dismiss must be denied.

V. CONCLUSION

Medicine Fireplace's First Amended Complaint contains sufficient factual allegations to supports the inference that CVB's decision to deny Medicine Fireplace's account application was motivated by both racial and religious animus. Therefore, the Court should deny CVB's motion to dismiss the First Amended Complaint's First and Second Causes of Action.

Dated: April 24, 2023

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