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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Joseph Mundo,

Plaintiff,

v.

Shelby Vandever, and Crownpoint Navajo
Family Court,

Defendants.

Case No.: CIV25-0136JB/KK

**REPLY IN SUPPORT OF THE
NAVAJO NATION'S MOTION TO
DISMISS**

The Navajo Nation hereby submits its Reply in support of its Motion to Dismiss. (Doc. 24). For the reasons stated below, the Navajo Nation respectfully asks that this Court dismiss Plaintiff's claims as to the Navajo Nation and its courts.¹

I. ARGUMENT

A. *Ex parte Young* Does Not Apply To The Present Motion

The operative complaint in this case does not name specific officials as defendants, and instead named the entire Navajo Nation's Family Court. For the reasons stated in the Motion, this fact eliminates the possibility that *Ex parte Young* could apply here in the first instance. (Doc. 24 at 5). Plaintiff's arguments regarding *Ex parte Young* are irrelevant as to the pending Motion.

B. *Montana* Is Irrelevant To The Present Motion

Plaintiff appears to argue that this Court should deny the Motion to Dismiss pursuant to *Montana v. United States*, 450 U.S. 544 (1981). *See* Doc. 35 at 3-5 In Plaintiff's view, this Court should rely on *Montana* to hold that "the Crownpoint Navajo

¹ The operative complaint in this case does not name any Navajo Nation officials as defendant.

1 Family Court plainly lacks jurisdiction over a custody dispute involving a non-Indian
 2 father.” (Doc. 35 at 5). Plaintiff is putting the cart before the horse – Plaintiff’s arguments
 3 regarding *Montana* go to the merits of ***Plaintiff’s*** claims here – i.e., that the Navajo
 4 Nation’s courts improperly exercised jurisdiction over Plaintiff. However, this argument
 5 is irrelevant to the present motion, as the issue before this Court is whether Tribal
 6 sovereign immunity bars this suit in its entirety as to the Navajo Nation and its courts.
 7 Even if Plaintiff were correct on the merits regarding Montana (and the Navajo Nation
 8 does not concede that Plaintiff is correct in either his recitation of the law or his
 9 application of the law to the facts), this would be irrelevant as to the immunity which bars
 10 this suit as to the Navajo Nation and its courts. *Montana* is simply irrelevant at this stage.

11 **C. Plaintiff’s Arguments Regarding Exhaustion Are Irrelevant To The**
 12 **Present Motion**


13 Like his discussion regarding Montana, *Plaintiff’s* arguments regarding
 14 exhaustion, *see* Doc. 35 at 5-7, simply miss the mark. Even if the Court were to credit
 15 Plaintiff’s arguments regarding exhaustion, that would not change the fact that the claims
 16 contained in the operative complaint fail as to the Navajo Nation and its courts due to
 17 tribal sovereignty.

18 **II. CONCLUSION**

19 For the reasons stated above, the Navajo Nation respectfully asks that this Court
 20 dismiss Plaintiff’s claims as to the Navajo Nation and its courts due to lack of subject
 21 matter jurisdiction.

22 **RESPECTFULLY SUBMITTED** this 29th day of March, 2025.

23 **ZWILLINGER WULKAN PLC**

24 By: 
 25 Colin Bradley
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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March 2025, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to who are registered in the CM/ECF system.

By: /s/ Brittany T.
Brittany T