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Fees Exempt, Gov't. Code
§§ 6103 and 6103.5

9 Attorneys for Defendants INYO COUNTY, CALIFORNIA; WILLIAM LUTZE,
10 Inyo County Sheriff; and THOMAS HARDY, Inyo County District Attorney

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA (FRESNO DIVISION)

13
14 BISHOP PAIUTE TRIBE,) Case No. 1:15-CV-00367 DAD-JLT
15)
16 Plaintiff,) POINTS AND AUTHORITIES IN
17 vs.) SUPPORT OF MOTION BY DEFENDANT
18 INYO COUNTY, a governmental entity,) INYO COUNTY, CALIFORNIA, TO
19 WILLIAM LUTZE, Inyo County Sheriff;) DISMISS ALL CLAIMS OF AMENDED
20 and THOMAS HARDY, Inyo County) COMPLAINT AGAINST IT
21 District Attorney,)
22 Defendants.) Date: October 17, 2017
Time: 9:30 a.m.
Courtroom: 5, United States Courthouse,
2500 Tulare Street, 7th
Floor, Fresno, CA 93721

District Judge: Hon. David A. Drozd
Magistrate: Hon. Jennifer L. Thurston
Complaint Filed: 3/6/15
Trial Date: Not Set

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I

INTRODUCTION

This motion is made by defendant INYO COUNTY, CALIFORNIA, a political subdivision of the State of California. The motion seeks dismissal of all claims made against the County in the Amended Complaint filed by plaintiff Bishop Paiute Tribe (“tribe”) on March 30, 2015 (the “Amended Complaint,” or sometimes “AC”). The ground for the motion is that, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Amended Complaint fails to state a claim against Inyo County upon which relief can be granted.

II

SUMMARY OF MOTION

This motion is based upon the fact that each, and all, of the acts and actions which are alleged by plaintiffs in the Amended Complaint to have been wrongful are those of either the independently elected Sheriff of Inyo County (defendant Sheriff William Lutze), or of the independently elected District Attorney of Inyo County (defendant District Attorney Thomas Hardy), and that those actions were taken within the discretion and capacities of the respective independently elected offices of Sheriff and District Attorney.

No allegation or ground for respondeat superior liability has been plead, or indeed exists, in the context of a declaratory relief and injunction action (the injunction being based on the declaratory relief being sought), such as that which is now being pursued by the plaintiff tribe.

Further, each of the claimed improper actions taken by either Sheriff Lutze, or District Attorney Hardy, consists of an independent act of those persons, taken within the lawful and clear discretion of each person as an independently elected public official. The County of Inyo, acting as a body itself, through its Board of Supervisors, does not and cannot make or control the decision of the Sheriff to arrest, or not to arrest, any person; and the County Board of Supervisors does not and cannot make or control the decision of the District Attorney to criminally prosecute a person in Court, or not to criminally prosecute a person in Court.

1 Stated in other words – the County Board of Supervisors simply, and clearly, does not
2 have the education and training required, as a matter of law, to either become a Sheriff, or a
3 District Attorney, or to make the official and discretionary decisions of a Sheriff or District
4 Attorney, in the law enforcement and prosecution field of public service. Further, as a matter
5 of law, the County Board of Supervisors cannot control the discretionary actions and decisions
6 of whether or not, or how, to arrest persons; and whether or not, or how, to prosecute criminal
7 cases. Those actions and decisions are taken and made by the Sheriff and District Attorney,
8 who are qualified and elected to make them in the performance of their respective official
9 prescribed duties.

10 III

11 THE SHERIFF AND DISTRICT ATTORNEY ARE ELECTED OFFICIALS,
12 AND EACH OF THEM ACTS INDEPENDENTLY, EXERCISING HIS OWN
13 DISCRETION IN PERFORMING HIS OFFICIAL DUTIES, WHICH ARE
14 PRESCRIBED BY CALIFORNIA LAW

15 As alleged in the Amended Complaint, defendant Sheriff William Lutze is the elected
16 Sheriff of Inyo County, and defendant Thomas Hardy is the elected District Attorney of Inyo
17 County. The California Government Code and other applicable California law provides that
18 each of Sheriff Lutze and District Attorney Hardy is an independently elected official, and is
19 charged with the duties prescribed by California statutes and other California law. With
20 regard to Sheriff Lutze and District Attorney Hardy, the following provisions of the California
21 Government Code and California Constitution, and interpretive case law regarding the same,
22 provide the frame-work and substance for these binding legal principles:

23 **Government Code § 24000. Enumeration of county officers**

24 The officers of a county are:

- 25 (a) A district attorney.
26 (b) A sheriff.
27 (c)

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Government Code § 24009. Elective or appointive offices; procedure for change in designation

(a) Except as provided in subdivision (b), the county officers to be elected by the people are the ... sheriff, ... district attorney, ...

Government Code § 25303. Supervision of officers

The board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, and particularly insofar as the functions and duties of such county officers and officers of all districts and subdivisions of the county relate to the assessing, collecting, safekeeping, management, or disbursement of public funds....

This section shall not be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and district attorney of a county. The board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county. (emphasis supplied)

Nothing contained herein shall be construed to limit the budgetary authority of the board of supervisors over the district attorney or sheriff.

Government Code § 26500. Public prosecutor

The district attorney is the public prosecutor, except as otherwise provided by law.

The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses.

Government Code § 26600. Preservation of peace

The sheriff shall preserve peace, and to accomplish this object may sponsor, supervise, or participate in any project of crime prevention, rehabilitation of persons previously convicted of crime, or the suppression of delinquency.

Government Code § 26601. Arrests

The sheriff shall arrest and take before the nearest magistrate for

1 examination all persons who attempt to commit or who have
2 committed a public offense.

3 **Government Code § 26602. Prevention and suppression of**
4 **disturbances; execution of disease prevention orders**

5 The sheriff shall prevent and suppress any affrays, breaches of the
6 peace, riots ... and investigate public offenses which have been
7 committed.

* * *

8 **California Constitution, Article 5, Section 13**

9 **§ 13. Attorney General; law enforcement**

10 Sec. 13. Subject to the powers and duties of the Governor, the
11 Attorney General shall be the chief law officer of the State. It shall
12 be the duty of the Attorney General to see that the laws of the State
13 are uniformly and adequately enforced. The Attorney General shall
14 have direct supervision over every district attorney and sheriff and
15 over such other law enforcement officers as may be designated by
16 law, in all matters pertaining to the duties of their respective offices
17

18 As the foregoing clearly show, California Sheriffs and District Attorneys perform their
19 official law enforcement and prosecution duties, exercising their own discretion, without
20 interference from County supervisors. The fact that a County board of supervisors may have
21 budgetary control over the departments of the Sheriff and District Attorney in no way
22 interferes with the discretion of these elected officials to perform, or the manner in which they
23 perform, their prescribed official duties.

24 On the contrary, Sheriffs and District Attorneys independently perform their duties as
25 prescribed by the foregoing cited statutes and California Constitutional provisions, and it is the
26 Attorney General, not a County Board of Supervisors, who has "supervision over [each and]
27 every district attorney and sheriff." California Constitution, Article 5, Section 13.
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IV

NO CLAIM IS MADE IN THE AMENDED COMPLAINT
THAT INVOKES RESPONDEAT SUPERIOR LIABILITY

In addition to the foregoing, all of the claims that are set forth in plaintiff's Amended Complaint seek declarations of rights, or injunctions, against the elected Inyo County Sheriff and elected Inyo County District Attorney in and pertaining to the discretionary performance of their official duties. There is no claim for tort liability; there is no claim for 42 U.S.C. § 1983 liability; there is no claim for other respondeat superior liability; and there is no claim for any other relief that the County itself can provide.

Accordingly, there is no claim made against the County for which this Court may render relief as against it; and this motion to dismiss, for failure to state a claim upon which relief may be obtained, should be granted as to defendant Inyo County.

V

CONCLUSION

By way of the foregoing, the motion herein made by defendant Inyo County for dismissal of the entirety of plaintiff's Amended Complaint against it should be granted without leave to amend.

Dated: April 14, 2015

Respectfully submitted,

LAW OFFICES OF JOHN D. KIRBY,
A Professional Corporation

By 
JOHN D. KIRBY

Attorneys for Defendant INYO COUNTY