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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RONALD D. ALLEN JR., RAYMOND) CASE NO. 12-CV-1668-WQH-KSC
BOZIGIAN, ALEXANDRA M.)
CASTOR, KEITH DENVER, MILTON)
DENVER, JESSICA FLOREZ,) NOTICE OF ADDITIONAL RECENT
ANTHONY FREEMAN, MIKKI A.) AUTHORITIES IN SUPPORT OF
GRABER, MIKE HACKMAN,) PLAINTIFFS' OPPOSITION TO
JOSEPH HARRIS, NIKKI D. HARRIS,) DEFENDANTS' MOTION TO
GINA HOWARD, BEN JOHNSON,) DISMISS
PAUL JOHNSON, BONNIE J. KING,)
BRITTNEY LUTTERS, CHERYL)
MAJEL, JULIEANNE MENDOZA,)
LUANNE MORO, KALCIE) DATE: March 1, 2013
ONTIVEROS, KIRSTEN) TIME: 10:00 am
ONTIVEROS, VIKKI L. OXLEY,) CTRM: 14B - The Honorable William
JOEY PINK, MATTHEW PINK, JOHN) Q. Hayes
RANDOLPH, LILLIAN VANCE, and)
MARIA J. VIVANCO)

Plaintiffs,

vs.

ROBERT H. SMITH, LEROY H.
MIRANDA JR., KILMA S. LATTIN,
THERESA J. NIETO, and DION
PEREZ

Defendants.

1 Plaintiffs hereby submit the following additional recent authorities in further
2 support of their opposition to Defendants' pending motion to dismiss.

3 In *Maxwell v. Cnty. of San Diego*, No. 10-56671, 2013 U.S. App. LEXIS
4 3106 (9th Cir. Feb. 14, 2013), attached hereto as Exhibit A, the Ninth Circuit, in
5 concluding that paramedics from the Viejas Band of Kumeyaay Indians Tribal Fire
6 Department were not entitled to tribal sovereign immunity, adopted a remedy-
7 focused analysis.¹ There, the Ninth Circuit held that where "the plaintiff seeks
8 money damages 'not from the state treasury but from the officer[s] personally,'" the
9 sovereign was not "the real, substantial party in interest," and sovereign
10 immunity did not apply to protect the tribal employees from suit. *Id.* at *27.
11 Likewise, in the case at bar, Plaintiffs seek money damages from the Individual
12 Defendants personally, instead of from the Tribe. *See* Complaint, at 61.²

13 In *Salt River Project Agricultural Improvement and Power District v. Lee*,
14 No. CV-08-08028-PCT-JAT, 2013 U.S. Dist. LEXIS 10952 (D. Ariz. Jan. 28,
15 2013), attached hereto as Exhibit B, the court rejected arguments by current and
16 former justices of the Navajo Nation Supreme Court that they could not be subject
17 to suit because they were protected by sovereign immunity. The court determined
18

19 ¹ Although the Ninth Circuit ordered that its previous *Maxwell* opinion dated
20 September 13, 2012 (which appears at 697 F.3d 941) be withdrawn, the new
21 superseding *Maxwell* opinion by the Ninth Circuit is substantially similar to its
22 previous opinion. *See* Exhibit A to Notice of Recent Authorities in Support of
23 Plaintiffs' Opposition to Defendants' Motion to Dismiss, filed on December 17,
24 2012 (Docket No. 26).

25 ² Earlier, Defendants had argued that *Maxwell* was not "settled Ninth Circuit law"
26 because petitions for rehearing were pending. *See* Defendants' Response to
27 Plaintiffs' Notice of Recent Authorities in Support of Plaintiffs' Opposition to
28 Defendants' Motion to Dismiss, filed December 19, 2012 (Docket No. 28). Given
the Ninth Circuit's denial of the petitions for panel rehearing and the petitions for
hearing *en banc*, 2013 U.S. App. LEXIS 3106, at *2, *Maxwell* is now settled Ninth
Circuit law.

1 that even if the tribal justices had been acting in their representative capacity and
2 within the scope of their authority, they were not entitled to dismissal from the suit
3 under the *Ex parte Young* doctrine, as plaintiff had alleged an ongoing violation of
4 federal law and sought prospective relief. *Id.* at **10-16. The court further held
5 that the Navajo Nation was not a necessary party required to be joined under Fed.
6 R. Civ. P. 19(a) because the Navajo official defendants sufficiently represented the
7 tribe's interests in the case. *Id.* at *46.

8 DATED: February 19, 2013

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11 /s/ Elizabeth P. Lin

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