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

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10 LUTZE; AND INYO COUNTY DISTRICT ATTORNEY THOMAS HARDY

11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF CALIFORNIA

13  
14  
15 BISHOP PAIUTE TRIBE, ) Case No. 1:15-CV-00367 --- JLT  
16 )  
17 ) Plaintiff, ) POINTS AND AUTHORITIES IN  
18 ) vs. ) SUPPORT OF MOTION BY  
19 ) DEFENDANT COUNTY OF INYO  
20 ) TO DISMISS AMENDED COMPLAINT  
21 ) INYO COUNTY, a governmental entity, ) AGAINST IT FOR FAILURE TO STATE  
22 ) WILLIAM LUTZE, Inyo County Sheriff; ) CLAIM UPON WHICH RELIEF CAN BE  
23 ) and THOMAS HARDY, Inyo County ) GRANTED [FRCP 12(b)(6)]  
24 ) District Attorney, )  
25 ) Date: June 2, 2015  
26 ) Defendants. ) Time: 9:30 A.M.  
27 ) Dept: To Be Assigned

District Judge: To Be Assigned  
Magistrate: Hon. Jennifer L. Thurston  
Complaint Filed: 3/6/15  
Trial Date: Not Set

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TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY OF MOTION ..... 1

II. THE SHERIFF AND DISTRICT ATTORNEY ARE INDEPENDENTLY ELECTED OFFICIALS, AS SET FORTH IN CALIFORNIA LAW, AND EACH OF THEM ACTS INDEPENDENTLY, AND WITH HIS OWN DISCRETION, IN PERFORMING HIS ELECTED OFFICIAL DUTIES AS PRESCRIBED BY CALIFORNIA LAW ..... 1

III. NO CLAIMS THAT INVOKE RESPONDEAT SUPERIOR LIABILITY ..... 4

IV. CONCLUSION ..... 5

I

INTRODUCTION AND SUMMARY OF MOTION

This motion is made by defendant COUNTY OF INYO (sometimes herein also referred to as "Inyo County" or simply the "County"), a political subdivision of the State of California, to dismiss the entirety of plaintiff's Amended Complaint, and each claim therein, filed against it in this case.

The motion is based upon the fact that each and all of the acts and actions which are alleged by plaintiffs to have been wrongful, as alleged in the Amended Complaint, 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), which actions were taken within the discretion and capacities of their respective independently elected offices of Sheriff and District Attorney. As such, in that each of such actions was the independent act within the discretion of an independently elected official, and in that the County of Inyo, as a body itself, does not control and as a matter of law cannot control the said discretionary actions taken by said elected officials, in the performance of their respective duties, no relieve for the alleged wrongful acts can be obtained as against the County itself, and the claims herein made against the County should therefore be dismissed.

II

THE SHERIFF AND DISTRICT ATTORNEY ARE INDEPENDENTLY ELECTED OFFICIALS, AS SET FORTH IN CALIFORNIA LAW, AND EACH OF THEM ACTS INDEPENDENTLY, AND WITH HIS OWN DISCRETION, IN PERFORMING HIS ELECTED OFFICIAL DUTIES AS PRESCRIBED BY CALIFORNIA LAW

As alleged in the Amended Complaint, defendant Sheriff William Lutze is the elected Sheriff of Inyo County, and defendant Thomas Hardy is the elected District Attorney of Inyo County. The California Government Code and other applicable California law provides that each of Sheriff Lutze and District Attorney Hardy is an independently elected official, and is

1 charged with the duties prescribed by the California Government Code and other California  
2 law. With regard to Sheriff Lutze and District Attorney Hardy, the following provisions of the  
3 Government Code and California Constitution, and interpretive case law regarding the same,  
4 provide the frame work for these principles:

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

6 The officers of a county are:

- 7 (a) A district attorney.  
8 (b) A sheriff.  
9 (c) .....  
10 (x) Such other officers as are provided by law.

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

- 13 (a) Except as provided in subdivision (b), the county officers to be  
14 elected by the people are the ... sheriff, ... district attorney, ... and  
15 coroner.  
16 .....

17 **Government Code § 24200. Election date of county officers;  
18 beginning of term**

19 Except as otherwise provided, all elective county officers shall be  
20 elected at the general election at which the Governor is elected, and  
21 take office at 12 o'clock noon on the first Monday after the January  
22 1st succeeding their election.

23 **Government Code § 25303. Supervision of officers**

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

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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.

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

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

The sheriff shall prevent and suppress any affrays, breaches of the peace, riots, and insurrections that come to his or her knowledge, and investigate public offenses which have been committed. The sheriff may execute all orders of the local health officer issued for

1 the purpose of preventing the spread of any contagious or  
2 communicable disease.

3  
4 **California Constitution, Article 5, Section 13**

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

6 Sec. 13. Subject to the powers and duties of the Governor, the  
7 Attorney General shall be the chief law officer of the State. It shall  
8 be the duty of the Attorney General to see that the laws of the State  
9 are uniformly and adequately enforced. The Attorney General shall  
10 have direct supervision over every district attorney and sheriff and  
11 over such other law enforcement officers as may be designated by  
12 law, in all matters pertaining to the duties of their respective  
13 offices, and may require any of said officers to make reports  
14 concerning the investigation, detection, prosecution, and  
15 punishment of crime in their respective jurisdictions as to the  
16 Attorney General may seem advisable. Whenever in the opinion of  
17 the Attorney General any law of the State is not being adequately  
18 enforced in any county, it shall be the duty of the Attorney General  
19 to prosecute any violations of law of which the superior court shall  
20 have jurisdiction, and in such cases the Attorney General shall have  
21 all the powers of a district attorney. When required by the public  
22 interest or directed by the Governor, the Attorney General shall  
23 assist any district attorney in the discharge of the duties of that  
24 office.

18 As the foregoing show, California Sheriffs and California District Attorneys perform  
19 their 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 **III**

25 **NO CLAIMS MADE THAT INVOKE RESPONDEAT SUPERIOR LIABILITY**

26 Further, all of the claims set forth in plaintiff's Amended Complaint seek declarations  
27 of rights or injunctions against the elected Sheriff and elected District Attorney of Inyo County  
28

1 in the discretionary performance of their duties. There is no claim for tort liability; there is no  
2 claim for 42 U.S.C. § 1983 liability; there is no claim for other respondeat superior liability;  
3 and there is no claim for any other relief that the County itself can provide. Accordingly, there  
4 is no claim made against the County for which this Court may render relief as against it; and  
5 this motion to dismiss, for failure to state a claim upon which relief may be obtained, should  
6 be granted as to defendant County of Inyo.

7 IV

8 CONCLUSION

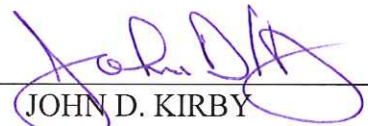
9 By way of all of the foregoing, the motion herein made by defendant County of Inyo  
10 for dismissal of the entirety of plaintiff's Amended Complaint against it should be granted  
11 without leave to amend.

12 Dated: April 14, 2015

Respectfully submitted,

13 LAW OFFICES OF JOHN D. KIRBY,  
14 A Professional Corporation

15  
16 By

  
17 \_\_\_\_\_  
JOHN D. KIRBY

18 Attorneys for Defendants COUNTY OF  
19 INYO, Inyo County Sheriff WILLIAM  
20 LUTZE, and Inyo County District Attorney  
THOMAS HARDY