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§§ 6103 and 6103.5

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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 DEFEN-
19) DANT WILLIAM LUTZE, SHERIFF
20) OF INYO COUNTY, TO DISMISS
21) SPECIFIED (AND UN-NUMBERED)
22) CLAIMS OF AMENDED COMPLAINT
23) AGAINST HIM FOR FAILURE TO
24) STATE CLAIM UPON WHICH RELIEF
25) CAN BE GRANTED [FRCP 12(b)(6)]
26)
27)
28) Date: June 2, 2015
Time: 9:30 A.M.
Dept: To Be Assigned

INYO COUNTY, a governmental entity,
WILLIAM LUTZE, Inyo County Sheriff;
and THOMAS HARDY, Inyo County
District Attorney,
Defendants.

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

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I

INTRODUCTION AND SUMMARY OF MOTION

This motion is made by defendant WILLIAM LUTZE, the elected SHERIFF OF INYO COUNTY, CALIFORNIA. Inyo County is, of course, a political subdivision of the State of California. The motion seeks to dismiss all claims against Sheriff Lutze that are made against him in plaintiff's Amended Complaint that arise out of the Sheriff's allegedly wrongful sending of a letter to the Bishop Tribal Police Department, dated January 6, 2015, entitled "Cease and Desist Order," which letter plaintiff claims somehow wrongfully proscribes the actions of Tribal police officers who are not California peace officers.

More specifically, this motion is made, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, on the ground that the issuance of said letter by Sheriff Lutze is not unlawful or wrongful in any way, in that the letter merely and properly orders Tribal police officers, who are not California peace officers, to (1) stop the unlawful exercise of California peace officer authority; and (2) stop the unlawful possessing (carrying) of firearms outside of Tribal property, and onto non-tribal County property, such as the carrying of firearms into State Court courtrooms when making court appearances.

II

PLAINTIFF DOES NOT CLAIM OR ALLEGE THAT TRIBAL POLICE OFFICERS ARE CALIFORNIA PEACE OFFICERS; AND TRIBAL POLICE OFFICERS ARE NOT, IN FACT, CALIFORNIA PEACE OFFICERS

California Penal Code § 830.1 sets forth who are California peace officers, as well as the extent of their authority. Section 830.1 provides:

§ 830.1. Persons who are peace officers; extent of authority

(a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions, any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city, any

1 chief of police, or police officer of a district, including police
2 officers of the San Diego Unified Port District Harbor Police,
3 authorized by statute to maintain a police department, any marshal
4 or deputy marshal of a superior court or county, any port warden or
5 port police officer of the Harbor Department of the City of Los
6 Angeles, or any inspector or investigator employed in that capacity
7 in the office of a district attorney, is a peace officer. The authority
8 of these peace officers extends to any place in the state, as follows:

9 (1) As to any public offense committed or which there is probable
10 cause to believe has been committed within the political
11 subdivision that employs the peace officer or in which the peace
12 officer serves.

13 (2) Where the peace officer has the prior consent of the chief of
14 police or chief, director, or chief executive officer of a consolidated
15 municipal public safety agency, or person authorized by him or her
16 to give consent, if the place is within a city, or of the sheriff, or
17 person authorized by him or her to give consent, if the place is
18 within a county.

19 (3) As to any public offense committed or which there is probable
20 cause to believe has been committed in the peace officer's
21 presence, and with respect to which there is immediate danger to
22 person or property, or of the escape of the perpetrator of the
23 offense.

24 (b) The Attorney General and special agents and investigators of
25 the Department of Justice are peace officers, and those assistant
26 chiefs, deputy chiefs, chiefs, deputy directors, and division
27 directors designated as peace officers by the Attorney General are
28 peace officers. The authority of these peace officers extends to any
place in the state where a public offense has been committed or
where there is probable cause to believe one has been committed.

(c) Any deputy sheriff of the County of Los Angeles, and any
deputy sheriff of the Counties of Butte, Calaveras, Colusa, Glenn,
Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Mariposa,
Mendocino, Plumas, Riverside, San Benito, San Diego, San Luis
Obispo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano,
Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne,
and Yuba who is employed to perform duties exclusively or
initially relating to custodial assignments with responsibilities for
maintaining the operations of county custodial facilities, including
the custody, care, supervision, security, movement, and

1 transportation of inmates, is a peace officer whose authority
2 extends to any place in the state only while engaged in the
3 performance of the duties of his or her respective employment and
4 for the purpose of carrying out the primary function of employment
5 relating to his or her custodial assignments, or when performing
6 other law enforcement duties directed by his or her employing
7 agency during a local state of emergency.

8 As can be seen, nowhere does Penal Code § 830.1 provide that police officers of
9 Indian Tribes, or of their Tribal police departments, are California peace officers. Simply
10 stated, Tribal police officers are not California peace officers. And, also simply stated, Tribal
11 police officers do not, therefore, have the authority of California peace officer. Thus, they
12 may not lawfully exercise California peace officer authority anywhere in the state.

13 This is critical, of course, because Sheriff Lutze's letter to the Tribal police department
14 properly advised the Tribal police department of these facts – and even provided an effective
15 10-day grace period for the Tribal police department to get the word out and stop the unlawful
16 exercise of California peace officer authority.

17 III

18 THE CONTENT OF SHERIFF'S LUTZE'S CLAIMED UNLAWFUL LETTER WAS 19 PROPER

20 The letter from Sheriff Lutze that plaintiff Tribe alleges is wrongful, and somehow
21 wrongfully intimidated it, and infringed upon its Tribal rights, is dated January 6, 2015, and is
22 attached to the Amended Complaint as Exhibit 3. The letter starts out by advising the Tribal
23 police department that its officers are "continuously committing serious violations of
24 California criminal statutes and that these actions have seriously endangered the public
25 welfare both within and outside of tribal territory." 1/6/15 Letter, page 1. The letter goes on,
26 at pages one and two, to advise among other things that:

- 27 a. The Sheriff's office "... has repeatedly given notice to Tribal Police that
28 its officers have been illegally exercising state police powers under color
of authority of Bishop Paiute tribal law...."

- 1 b. It cannot be overly emphasized to "... Tribal Police that its employees are
2 NOT California peace officers and also are NOT federal officers."
- 3 c. "Alarming, Tribal Police officers have been employing unlawful force
4 on subjects during the unlawful exercise of [California peace officer]
5 authority"
- 6 d. "... documented instances of illegal exercises of law enforcement
7 authority include, but are not limited to:
- 8 - "Unlawful operation of emergency vehicles off tribal property
 - 9 - "Violations of the California Vehicle Code ...
 - 10 - "False arrests
 - 11 - "Battery (both felony and misdemeanor)
 - 12 - "Illegal home entries
 - 13 - "Illegal searches of persons and property
 - 14 - "Possession of firearms in public (... outside tribal property)"

15 The letter then went on to state the following, which is the basis of all of the claims by
16 plaintiff Tribe concerning the Sheriff's letter of 1/6/15, and which letter is in turn the basis of
17 this motion to dismiss such claims:

18 **"Therefore, this Office orders that Tribal Police immediately (A)**
19 **cease and desist the unlawful exercise of California peace officer**
20 **authority both within and outside tribal property and (B) cease and**
21 **desist possessing firearms outside tribal property (e.g. court**
22 **appearances)" (Underscore supplied)**

23 It is the orders to stop the "unlawful exercise of California peace officer authority" and
24 stop the unlawful "possessing firearms outside tribal property (e.g. court appearances)" that
25 plaintiff Tribe here complains of as being wrongful and intimidating, and wrongfully
26 inhibiting, their claimed Tribal rights.

27 However, these admonishments do no such thing – they instead properly admonish,
28 and warn, and even give a 10-day grace period, to the Tribal police to get the word out, and
stop their unlawful conduct. The 10-day grace period arises from the request, after ordering
the cessation of the unlawful exercise of California peace officer authority, to provide the
Sheriff with assurance that Tribal police will indeed stop the unlawful exercise of California

1 peace officer authority, and the unlawful possession of firearms; and then provided that if they
2 did not do so, then after those 10-days, Tribal police would be subject to arrest and
3 prosecution for their continued unlawful exercise of California peace officer authority.

4 IV

5 SHERIFF'S LETTER DOES NOT ORDER CESSATION OF LAWFUL TRIBAL
6 AUTHORITY; ONLY UNLAWFUL CALIFORNIA PEACE OFFICER AUTHORITY

7 It is clear that nowhere does Sheriff Lutze order the cessation of lawful Tribal police
8 officer authority. The Sheriff's 1/6/15 letter instead only orders, and entirely properly orders,
9 the cessation of unlawful California peace officer authority. Such is clearly a proper exercise
10 of the Sheriff's law enforcement and peace-keeping authority, as prescribed by California law,
11 including without limit the following California Government Code Sections:

12 **§ 26600. Preservation of peace**

13 The sheriff shall preserve peace, and to accomplish this object may
14 sponsor, supervise, or participate in any project of crime prevention
15 ... or the suppression of delinquency.

16 **§ 26601. Arrests**

17 The sheriff shall arrest and take before the nearest magistrate for
18 examination all persons who attempt to commit or who have
19 committed a public offense.

20 **§ 26602. Prevention and suppression of disturbances;
21 execution of disease prevention orders**

22 The sheriff shall prevent and suppress any affrays, breaches of the
23 peace, riots, and insurrections that come to his or her knowledge,
24 and investigate public offenses which have been committed....

25 Accordingly, and once again, the actions of Sheriff Lutze, in sending his 1/6/15 letter
26 of admonishment and order of cessation of unlawful California peace officer authority, is
27 clearly a proper exercise of the Sheriff's law enforcement and peace-keeping authority, as
28

1 prescribed by California law, and does nothing to inhibit the exercise of lawful Tribal police
2 officer authority.

3 IV

4 CONCLUSION

5 For the reasons stated, the Sheriff's motion to dismiss all claims set forth in the
6 Amended Complaint that are based upon his 1/6/15 letter should be dismissed without leave to
7 amend.

8 Dated: April 14, 2015

Respectfully submitted,

9 LAW OFFICES OF JOHN D. KIRBY,
10 A Professional Corporation

11 By 

12 JOHN D. KIRBY

13 Attorneys for Defendants COUNTY OF
14 INYO, Inyo County Sheriff WILLIAM
15 LUTZE, and Inyo County District Attorney
16 THOMAS HARDY
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