

1 JOHN D. KIRBY, ESQ. (SBN 066432)  
2 LAW OFFICES OF JOHN D. KIRBY, A.P.C.  
3 9747 Business Park Avenue  
4 San Diego, California 92131  
(858) 621-6244  
(858) 621-6302 fax

5 MARGARET KEMP-WILLIAMS, County Counsel (SBN 123347)  
6 COUNTY OF INYO  
7 224 North Edwards Street, P.O. Box M  
8 Independence, California 93526  
(760) 878-0229  
(760) 878-2241 fax

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

9 Attorneys for Defendants COUNTY OF INYO; INYO COUNTY SHERIFF WILLIAM  
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 ) SUPPORT OF MOTION BY  
19 vs. ) DEFENDANT THOMAS HARDY,  
20 ) DISTRICT ATTORNEY OF INYO  
21 ) COUNTY, TO DISMISS ALL CLAIMS  
22 ) OF AMENDED COMPLAINT AGAINST  
23 ) HIM FOR FAILURE TO STATE CLAIM  
24 ) UPON WHICH RELIEF CAN BE  
25 ) GRANTED [FRCP 12(b)(6)]  
26 )  
27 )  
28 ) Date: June 2, 2015  
Time: 9:30 A.M.  
Dept: To Be Assigned

18 INYO COUNTY, a governmental entity,  
19 WILLIAM LUTZE, Inyo County Sheriff;  
20 and THOMAS HARDY, Inyo County  
21 District Attorney,  
22 Defendants.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY OF MOTION .....	1
II. ELEVENTH AMENDMENT IMMUNITY OF DISTRICT ATTORNEY HARDY .....	1
III. YOUNGER V. HARRIS ABSTENTION PRECLUDES FEDERAL COURT INJUNCTION OF STATE COURT CRIMINAL PROSECUTION .....	2
IV. FEDERAL ANIT-INJUNCTION ACT BARS INJUNCTIVE RELIEF .....	3
V. CONCLUSION .....	3

I

INTRODUCTION AND SUMMARY OF MOTION

This motion is made by defendant THOMAS HARDY, the elected DISTRICT ATTORNEY OF INYO COUNTY. Inyo County is, of course, a political subdivision of the State of California. The motion seeks dismissal of all claims made against District Attorney (sometimes herein "DA") Hardy in the Amended Complaint on the ground that the same fails to state a claim against Mr. Hardy upon which relief can be granted.

There are three reasons for this. The first is that District Attorney Hardy, in his role as a prosecutor, in the circumstances alleged in the Amended Complaint, is a California state actor, and he is therefore acting for the State of California in all of the acts of prosecution alleged. As such, he is immune from suit in federal court pursuant to the Eleventh Amendment to the United States Constitution.

Additionally, the federal court is precluded by the *Younger v. Harris* abstention from interfering with the state prosecution of defendant Daniel Johnson for the crimes with which he has been charged under state law, and the federal court may therefore not grant any of the injunctive relief requested by the plaintiff Tribe in connection with that ongoing prosecution.

Finally, and thirdly, any declaration of rights, or companion injunctive relief, being sought by the plaintiff Tribe in the Amended Complaint is precluded by the federal Anti-Injunction Act.

II

ELEVENTH AMENDMENT IMMUNITY OF DISTRICT ATTORNEY HARDY

California courts have held that when a County District Attorney is exercising his function as a prosecutor of persons charged with violating California criminal statutes, he is acting on behalf of the State of California, and is a state actor. Accordingly, here, because all the conduct which the Tribe alleges DA Hardy engaged in – the filing of criminal charges and the criminal prosecution of Mr. Johnson – is conduct that is in the course of Mr. Hardy's duties as a state actor and prosecutor, Mr. Hardy is immune from suit in federal court pursuant

1 to the Eleventh Amendment of the United States Constitution. Accordingly, no relief can be  
2 granted against Mr. Hardy in this action, as a result of his Eleventh Amendment immunity,  
3 and the entire Amended Complaint must be dismissed against him.

4 The Court in *County of Los Angeles v. Superior Court*, 181 Cal.App.4<sup>th</sup> 218, 234  
5 (2009) summarized as follows:

6 “As *Pitts* explained, the District Attorney acts as an agent of the  
7 State (*Pitts, supra*, 17 Cal.4th at p. 359, 70 Cal.Rptr.2d 823, 949  
8 P.2d 920), and “ ‘the count[y] ... cannot instruct the’ district  
9 attorney how to investigate or prosecute crime [citations and] ‘has  
10 no direct control over how the [district attorney] fulfills his law  
11 enforcement duty....’ ” (*Ibid.*) All the conduct complained of in the  
12 second cause of action pertained to the District Attorney in his  
13 capacity as agent for the State for which he is immune under the  
14 Eleventh Amendment.”

15 Further, Eleventh Amendment immunity extends to suits by foreign sovereigns and  
16 Indian tribes. *Seminole Tribe of Florida v. Florida* (1996) 517 U.S. 54; *Blatchford v. Native*  
17 *Village of Noatak & Circle Village* (1991) 501 U.S. 775, 779-782; and this immunity is not  
18 affected by a claim of federal question jurisdiction under 28 U.S. C. § 1362. See *Idaho v.*  
19 *Coeur d’Alene Tribe of Idaho* (1997) 521 U.S. 261 268-269. Thus, DA Hardy is immune  
20 from suit by the Tribe in federal court.

### 21 III

#### 22 YOUNGER V. HARRIS ABSTENTION PRECLUDES FEDERAL COURT 23 INJUNCTION OF STATE COURT CRIMINAL PROSECUTION

24 Here, the Tribe seeks relief in the form of an injunction precluding the continuing  
25 criminal prosecution of Daniel Johnson. However, such relief may not be provided by the  
26 federal court pursuant what is called the *Younger v. Harris* abstention. This abstention  
27 doctrine provides that absent extraordinary circumstances, not present here, federal courts may  
28 not enjoin or otherwise interfere with pending state court criminal prosecutions, as well as  
many other types of proceedings, on constitutional grounds. See *Younger v. Harris* (1971)  
401 U.S. 37, 49-53. The purpose of the *Younger v. Harris* abstention is to “avoid unnecessary

1 conflict between state and federal governments.” *United States v. Morros* (9<sup>th</sup> Cir. 2001) 268  
2 F.3d 695, 707.

3 IV

4 FEDERAL ANTI-INJUNCTION ACT BARS REQUESTED INJUNCTIVE  
5 AND DECLARATORY RELIEF

6 In addition, the federal Anti-Injunction Act bars the federal court from providing any  
7 of the injunctive or declaratory relief sought by the Tribe.

8 Subject to certain exceptions, not applicable here, federal courts “may not grant an  
9 injunction to stay proceedings in a State court.” 28 U.S.C. § 2283; *Employers Resource*  
10 *Management Co., Inc. v. Shannon* (4<sup>th</sup> Cir. 1995) 65 F.3d 1126, 1129-1130; *Roudebush v.*  
11 *Hartke* (1972) 405 U.S. 15, 20-21; and, the Anti-Injunction Act also applies to *declaratory*  
12 *judgments* if those judgments have the same effect as an injunction – which would be the case  
13 here. *California v. Randtron* (9<sup>th</sup> Cir. 2002) 284 F.3d 969, 975.

14 V

15 CONCLUSION

16 For the reasons stated, the motion by District Attorney Thomas Hardy herein, for  
17 dismissal of all claims against him that are alleged in the Amended Complaint, should be  
18 dismissed without leave to amend.

19 Dated: April 14, 2015

Respectfully Submitted,

20 LAW OFFICES OF JOHN D. KIRBY,  
21 A Professional Corporation

22  
23 By

  
24 JOHN D. KIRBY

25 Attorneys for Defendants COUNTY OF  
26 INYO, Inyo County Sheriff WILLIAM  
27 LUTZE, and Inyo County District Attorney  
28 THOMAS HARDY