Dorothy Alther (SBN 140906)
California Indian Legal Services
609 S. Escondido Blvd.
Escondido, CA 92025
760-746-8941
Fax 760-746-1815
dalther@calindian.org

Jasmine Andreas (SBN 264437)
California Indian Legal Services
873 N. Main St., Suite 120
Bishop, CA 93514
760-873-3581
Fax 760-873-7461
jandreas@calindian.org

Attorneys for Plaintiff
BISHOP PAIUTE TRIBE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BISHOP PAIUTE TRIBE Plaintiff, vs. INYO COUNTY; WILLIAM LUTZE, Inyo County Sheriff; THOMAS HARDY, Inyo County District Attorney. Defendants.	Case No. 1:15-CV-00367--JLT PLAINTIFF'S CONSOLIDATED OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS Date: June 2, 2015 Time: 9:30 A.M. Dept.: To Be Assigned Before: Magistrate Jennifer L. Thurston District Judge: To Be Assigned

INTRODUCTION

Defendants, pursuant to FRCP 12(b)(6), filed independent Motions to Dismiss on the grounds that Plaintiff ("Tribe")has failed to state claim upon which relief can be granted.

The Tribe seeks declaratory relief asking for clarification and settling, as a matter of federal law, its inherent authority over non-Indian offenders who violate tribal and state law on tribal lands, as well as, prospective injunctive relief preventing the defendants from further arrests and prosecutions of its law enforcement officers when exercising tribal authority. As demonstrated below, each defendant has acted directly or indirectly in creating the current controversy at the heart of the Tribe's complaint, and is therefore subject to the Tribe's request for equitable relief.

LEGAL ARGUMENT

Under Rule 12(b)(6), "dismissal for failure to state a claim is proper 'only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir.1993). Rule 12(b)(6) should be read in conjunction with Rule 8(a), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure 1355–56 (1990). Moreover, a court "must accept all material allegations in the complaint as true, and construe them in the light most favorable [to the plaintiff]." *NL Industries v. Kaplan*, 792 F.2d 896 (9th Cir.1986). The Tribe has met this standard and the Defendants' Motions to Dismiss should be denied

A. Inyo County is Subject to Declaratory and Injunctive Relief Because the Inyo County Sheriff was Acting as a County Official and Policymaker When Investigating and Arresting the Tribe's Law Enforcement Officer in Violation of Established Federal Law.

In consultation with defense counsel, it was agreed that the Tribe's relief against the County is limited to the actions of the Inyo County Sheriff, and not the District Attorney—under federal and state case-law holding that a district attorney carrying out his or her prosecutorial functions is acting as a state—not county, official. *Bishop Paiute Tribe v. County of Inyo et.al*,

275 F.3d 893,908-909 (9th Cir. 2002), (*vacated and remanded on other grounds* 538 U.S. 702 (2003*)* citing *Pitts v. County of Kern,* 17 Cal.4th 340 (1998).

The County moves to dismiss the Tribe's complaint on the grounds that the County does not, and cannot, control the actions of the County Sheriff. Because the Sheriff acts within his discretion and capacity as independent elected official, no relief for his alleged "wrongful" acts can be obtained from the County. Contrary to the County's assertion, federal law has established that pursuant to California law, a sheriff is a "county official" and that a County is liable if the Sheriff's actions complained of were taken in his/her capacity as a final County policymaker.

In *Bishop Paiute Tribe v. County of Inyo et.al*, supra., the County, much like here, sought to distance itself from the actions of its, then Sheriff, in an effort to avoid responsibility for his wrongdoings alleged in the Tribe's 42 U.S.C. §1983 action. In that case, the Tribe sought monetary damages, declaratory and injunctive relief from the County, the County Sheriff and District Attorney for the improper issuance and execution of a search warrant that resulted in the seizure of tribal documents from the Tribe's gaming facility located on tribal lands. The court held that the County *was responsible and liable* for the actions of its Sheriff because he was a County official and was a final County policy maker at the time the search warrant was obtained and executed against the Tribe.

In reaching its holding the court made a two-part inquiry on when a local government is liable for an official's conduct: (1) did the official have final policymaking authority concerning the action alleged to have caused the particular violation of the federal constitutional, statute or law; and (2) was the official policymaker acting for the local government for the purposes of the particular act. Both inquiries require the court to look to the California Constitution, applicable

statutes, and state case law. *Bishop Paiute Tribe v. Inyo County*, 275 F.3d at 906 citing *McMillian v. Monroe County*, (Alabama), 520 U.S. 781 (1997).

Responding to the first inquiry and after its review of California law, the court conclusively found, that "[T]here is no doubt that the" Sheriff has "final decision making authority to obtain and execute search warrants for the County of Inyo." *Bishop Paiute Tribe v. Inyo County* 275 F.3d at 910.

Turning to the second inquiry, the Court followed the analytical framework set out in *McMillian,* where the Supreme Court, after careful review of the Alabama Constitution and state law, found the Monroe County Sheriff and Monroe County District Attorney were state officials and policymakers. The court in *Bishop Paiute Tribe* found that unlike the Alabama Constitution in *McMillian,* the California Constitution did not designate sheriffs as a member of the executive branch, but instead they were defined under Article XI, "Local Government", Section 4 which provides that the "County Charter shall provide for … an elected sheriff…" Also, distinguished from *McMillian,* Article IV, Section 8 of the Constitution does not provide for the impeachment of a sheriff., Instead, sheriffs are removed from office following the accusations of the County Grand Jury. California Government Code ("Gov. Code") §3069. Id. at 907.

The court also found relevant that under California statutory law, specifically Gov. Code §24000(a) and (b) it defines Sheriffs as a "County Officers" and that the [County] Board of Supervisors set their salaries. Gov. Code §25300. Sheriffs must be registered to vote in their respective counties. Gov. Code § 24001. The county has authority to supervise the sheriff's conduct and use of public funds. Gov. Code §25303. Finally, the Court looked at Gov. Code §26603 which requires sheriffs in California to attend upon and obey state courts within their county. Id. at 907.

While the Court acknowledged California Constitutional and statutory provisions providing for supervisory authority by the Attorney General over sheriffs, it found:

> However, "supervision by the Attorney General does not alter the status of the sheriff [and district attorney] as elected county officials." *Brewster v. County of Shasta*, 112 F. Supp. 2d 1185, 1190 (E.D. Cal. 2000); See also *People v. Brophy*, 120 P. 2d 946,953 (Cal.Dist.Ct.App.1942) (Noting that constitutional oversight does not "contemplate absolute control and direction of such officials …Especially is this true as to sheriffs and district attorneys…") Id. at 907-908.

The County further argues that it is specifically prohibited under Gov. Code § 25303 from obstructing the "investigative functions of the sheriff …" However, when confronted with a similar argument, the federal court in *Brewster v. County of Shasta*, 112 F. Supp. 2d 1185, 1190 (E.D. Cal. 2000), looked to the California Supreme Court holding in *Dibb v. San Diego County*, 8 Cal. 4th 1200 (Cal. 1994). Drawing from *Dibb* the court found:

> ... [the Supreme Court] rejected the argument that §25303 limited the county's authority to monitor county officials solely to their fiscal conduct. (citation omitted) Rather the court observed that, under that statute, a county board of supervisors has the power to 'supervise the county officials in order to assure that they faithfully perform their duties.' The court further explained that 'the operations of a sheriff's department …and conduct of employees of th[at] department are legitimate concerns of the board of supervisors.' The court did not perceive that such general supervisorial powers were in conflict with the obligation of the board not to obstruct the sheriff's offices investigative function. *Brewster*, 112 F. Supp. 2d 1189-1190.

Both *Brewster* and *Dibb* are cited as support by the 9th Circuit in the *Bishop Paiute Tribe v. Inyo County* case. *Id*. at 907 and 910.

As in *Bishop Paiute Tribe*, the County is responsible for the actions of the Sheriff—a county policymaker—when he violated established federal law by obtaining and executing an arrest warrant against the Tribe's law enforcement officer. The County is also responsible for the Sheriff's actions as a final policymaker when he issued his January 6, 2014 "Cease and Desist" order threatening the Tribe, and its law enforcement officers, with future criminal arrests,

prosecutions and injunctive action, based on the Tribe's police officers carrying out their legal and lawful duties. This "order" demonstrates a patent misunderstanding of federal law and inherent tribal authority. The "order" does not cite any legal authority, yet seemingly empowers the Sheriff to determine what is and is not the lawful exercise of tribal police authority over non-Indians. As a matter of County policy, Inyo County is coextensively liable for its policy, as expounded in the Sheriff's "Cease and Desist" order as the Sheriff.

The Tribe's legal action against the County, seeks only to clarify the law, and settle the ongoing controversy between a County official, its Sheriff—whose policies and actions have and will continue result in further injury to the Tribe and threaten the peace and security on its Reservation for tribal and non-tribal members alike.

B. The Inyo County Sheriff's January 6, 2015 "Cease and Desist" Order Threatening Future Arrests and Prosecutions of Tribal Officers Violates Established Federal Law and the Tribe's Inherent Authority Over Actions Involving Non-Indians.

Defendant, William Lutze (Sheriff), moves for dismissal on the grounds that his "Cease and Desist" order to the Tribe merely placed the Tribe on notice of the illegal actions of its police officers, who are not California peace officers, and that the "order" was neither unlawful nor wrongful. The Sheriff's "order" had no legal authority, made inaccurate statements regarding the authority of Tribal Officers and federal law. The "order" was transmitted officially, with the sole intent to intimidate and harass the Tribe, and dissuade its officers from protecting the public. Given the events that took place the day before the issuance of the "order", it was a calculated overreach by a County official.

The Sheriff's January 6, 2015 "Cease and Desist" order must be read in context. On January 5, 2015, an arrest warrant had been issued and Sheriff arrested Tribal Officer Daniel Johnson. Also, on January 5, 2015, Defendant, District Attorney, filed a four count criminal complaint against Office Johnson in state Superior Court. Reeling from such overtly threatening conduct, the Tribe then received an order from the Sheriff informing it that more arrests and prosecutions were forthcoming, unless the Tribe's officers stopped "illegally exercising state police power under the color of authority of Bishop Paiute tribal law, notwithstanding applicable federal law." (Complaint, Exhibit 3). The actions taken by the Sheriff and the District Attorney against Tribal Officer Johnson, coupled with the "Cease and Desist" order from the Sheriff, left the Tribe with a "Hobson's Choice." Should the Tribe order its Officers not to interact or engage with non-Indian on the Reservation who are or have committed state criminal offenses, which threaten community safety, or should it's Officers continue to carry out tribal inherent authority and federal law and run the risk of being arrested by the Sheriff and prosecuted for false arrest, impersonating a state officer, and using lawful restraint when necessary?

The actions taken by the Defendants, and particularly the "Cease and Desist" order, compel the Tribe to file this declaratory action. The authority of tribal law enforcement officers over non-Indians who commit crimes on the Reservation, must clearly be defined in order to avoid further interference from the Defendants and threatening public safety on the reservation.

The Sheriff's January 6, 2015 "order" typifies what is at issue in the Tribe's federal action. Sheriff Lutze equates tribal officers' on reservation duties of stopping, restraining and detaining a non-Indian, while conducting an investigation for a violation of state law, as (1) making an unlawfully arrest that constitutes false imprisonment, and (2) the tribal officer enforcing state law which he or she are not authorized to do, are therefore guilty of

impersonating a state officer. Further, if force used during the restraining or detaining of the non-Indian, the tribal officers will not be treated as a law enforcement officer carrying out duties within their scope of employment, but rather as a private individual subject to criminal battery.

Statements from the January order (Complaint, Exhibit 3) demonstrate this misunderstanding:

1. "The following documented instances of illegal exercise of law enforcement authority by Tribal Police include…*illegal detentions, false arrest, battery, illegal searches of persons and property*...";

2. (In recounting the event on December 24, 2014 the order states) "…Tribal Officer Daniel Johnson arrested a female for alleged trespass on tribal lands and violation of state restraining order. … During Officer's Johnson's attempted arrest of the female, he committed felony battery…";

3. "Therefore. this office orders the Tribal Police immediately (A) cease and desist the unlawful exercise of California peace officer authority both within and outside the tribal property. …";

4. "If Tribal Police does not comply …Tribal Police employees will be subjected to arrest and criminal prosecution for applicable charges as well as Penal Code § 538d (Fraudulent impersonation of a Peace Officer)."

The January order further states that the Sheriff's Office will seek injunctive relief and an order for court costs and attorney fees, should the Tribe fail to comply with the order. Such assertions and allegation cannot be squared with the Tribe's authority and federal law which allows tribal law enforcement officers to legally take the specified actions, and constitute a subversion of public safety by Inyo County's Sheriff.

Incongruently, the Sheriff maintains that he was and is not ordering cessation of "lawful tribal authority." However, the Tribe and federal law determines "lawful tribal authority" over non-Indians, not the Inyo County Sheriff, as a policymaker for the County, and the District Attorney. *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 851–52(1985) (This

Court has frequently been required to decide questions concerning the extent to which Indian tribes have retained the power to regulate the affairs of non-Indians. In all of these cases, the governing rule of decision has been provided by federal law); *Santa Ynez Band of Mission Indians v. Torres,* 262 F.Supp.2d 1038, 1041 (C.D.Cal.2002)(…the tribe's inherent powers must necessarily arise under federal law, since federal law defines the outer boundaries of an Indian tribe's power over non-Indians.)

Allowing Defendants to determine what is and is not proper tribal authority over non-Indians, by resorting to state criminal actions against the Tribe's Police officers, directly infringes on the Tribe's authority as a sovereign government. The practical effect of such a result is that defendants would be allowed to usurp tribal and federal authority with state authority in determining what is permissible and impermissible tribal police conduct in cases involving non-Indians committing state crimes and violations of tribal law on tribal lands. The Sheriff's Motion to Dismiss should be denied.

C. The Court is not Barred from Granting the Tribe's Declaratory and Prospective Injunctive Relief Against the Inyo County District Attorney.

The District Attorney seeks to dismiss the Tribe's complaint on several grounds: (1) the complaint is barred by the Eleventh (11th) Amendment; and (2) the Court is precluded from enjoining the current state criminal proceedings under *Younger v. Harris,* 37 U.S. 401 (1971), and the federal Anti-Injunction Act, 28 U.S.C. § 2283. The District Attorney's arguments are misplaced and based on a misunderstanding of the relief the Tribe is seeking in its action.

After consultation with defense counsel it has become apparent that Defendants are confused regarding the relief sought by the Tribe. The Tribe is not seeking to enjoin or interfere with the pending state criminal case against Tribal Officer Daniel Johnson. Had the Tribe sought

such relief its complaint would have asked for a permanent injunction against the District Attorney enjoining his prosecution of Office Johnson. Such permanent injunctive relief ordinarily is preceded by an immediate request for a Temporary Restraining Order and Preliminary Injunction pending the outcome of the Tribe's federal lawsuit. The Tribe has not sought such pre-trial injunctive relief.

The Tribe's relief, is proper under 28 U.S.C**. §** 2201,as a Declaration that the Tribe has inherent authority, recognized and affirmed under federal law, to stop, restrain, detain, investigate violations or possible violations of tribal, state or federal law by non-Indians on tribal lands and to deliver the non-Indian to the proper law enforcement authorities. Once declared, the Tribe seeks a *prospective* injunction against future criminal charges and prosecution against its officers when and while exercising their lawful authority. The Tribe's request for a prospective injunction is proper and a common form of relief under 28 U.S.C. § 2202, which allows: "Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

In light of the clarification of the relief sought by the Tribe, it now turns to District Attorney's Motion to Dismiss.

1. Under the doctrine of *Ex Parte Young*, the 11th Amendment does not bar the Tribe's Declaratory and Prospective Injunctive relief against the Inyo County District Attorney.

In support of the District Attorney's argument for dismissal on 11th Amendment grounds, he cites 2 cases in which the plaintiffs sued the county district attorney for monetary damages under state and/or federal civil rights statutes. *County of Los Angeles v. Superior Court*, 181 Cal.App.4th 218 (2nd App.Dist. 2009)(plaintiffs sought damages for actions of the district

attorney for violation of their civil rights under California Civil Code section 52.1 and 42 U.S.C. § 1983("section 1983"); *Pitts v. County of Kern*, 17 Cal.4th 340 (1998)(individual whose convictions for child molestation were reversed on appeal brought actions seeking damages and attorney fees against the county, the district attorney, the district attorney's employees, and other defendants, asserting numerous civil rights violations pursuant to section 1983). These cases are consistent with the well-established rule that the 11th Amendment will bar a suit against a state official sued in his or her official capacity because such a suit is not against the official but rather against the official's office and thus no different than a suit against the state itself. *County of Los Angeles v. Superior Court*, 181 Cal.App.4th at 233; *Leon v. County of San Diego et. al*, 115 F. Supp.2d 1197,1200 (S.D. CA. 2000) citing *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989). However, these cases are inapposite to the equally well-established rule that the 11th Amendment is *not* a bar to a suit against a state official, including a district attorney, in which the plaintiff seeks declaratory and prospective injunction relief. *Ex Parte Young*, 209 U.S. 123 (1908).

The *Ex Parte Young* doctrine provides an exception to a state's and state official's 11th Amendment immunity defense if the suit is seeking a declaration that a state official is acting in violation of federal law and must be enjoined from doing so in order to prevent future injury to the plaintiff and others who are subject the state official's conduct. "The rule of *Ex Parte Young* 'gives new life to the Supremacy Clause' by providing a pathway to relief from continuing violations of federal law by a state or its officers." *Los Angeles County Bar Ass'n. v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992), citing *Green v. Mansour*, 474 U.S. 64 (1985).

Ex Parte Young is directly applicable to and controls the current case. As the Tribe has explained above, it seeks a declaration that federal law allows its law enforcement officers to

stop, restrain, conduct an investigation and detain a non-Indian who has violated tribal, state, and/or federal law and deliver the non-Indian to local law enforcement authorities. By prosecuting the Tribe's police officer and the threat of future prosecutions against tribal police officers for their actions while detaining a non-Indian on the Reservation, who is or has violated tribal and state law, the District Attorney is violating the Tribe's inherent authority and federal law over non-Indians.

Knowing that the current prosecution cannot be enjoined or interfered with, the Tribe's declaratory action merely seeks to protect its tribal officers from future arrest and prosecution by clarifying and affirming the Tribe's authority over non-Indians. The Tribe seeks only prospective relief in this case and as such the 11th Amendment presents no barrier to the Tribe's request for declaratory and prospective injunctive relief against the District Attorney in his official capacity in order to prevent continued violations of federal law in the future.

2. The *Younger v. Harris* abstention is not applicable to the Tribe's case and is not a basis for dismissal.

Relying on *Younger v. Harris*, 37 U.S. 401 (1971), the District Attorney argues that the Tribe's case must dismiss because the court is precluded from exercising equitable jurisdiction to enjoin ongoing state criminal case against Tribal Officer Johnson. Because the Tribe is not seeking to enjoin any ongoing state criminal action, abstention under *Younger* is not applicable and cannot be used as a basis for dismissal.

The *Younger* doctrine is also not applicable to the current case since because the Tribe is not a party to the ongoing state criminal proceeding. In *Younger*, the plaintiff, while being criminal prosecuted in the state, simultaneously filed a federal action seeking to enjoin the state prosecution on the ground that the state's criminal syndicalism law which he was being

prosecuted under, was unconstitutional. The Supreme Court held that equitable relief was unwarranted since the state proceeding was ongoing at the time the plaintiff filed his federal action, he could have raised his constitutional objection during his prosecution and there was no showing that the prosecution was brought in bad faith. The policy considerations underlying the Court's holding are grounded in principles of judicial economy, as well as, comity and the proper state-federal relationship. *Green v. City of Tucson,* 255 F.3d 1086, (9th Cir. 2001)(*overruled in part on other grounds by Gilbertson v. Albright*, 381 F.3d 965 (9th Cir. 2004))

Although the *Younger* doctrine has been expanded over the years to cover civil and administrative enforcement actions and requests for declaratory relief (*Huffman v. Pursue, Ltd.* 420 U.S. 529 (1975); *Samuels v. Mackell,* 401 U.S. 66 (1971)),federal courts remain reluctant to extend the doctrine to cases in which the federal plaintiff is not a party to the ongoing state proceeding. As the 9th Circuit found in *Vasquez v. Rackauckas*, 734 F.3d 1025, (2013),

> 'usually, federal plaintiffs who are not also parties to pending litigation in state court may proceed with their federal litigation' without being barred under *Younger*. Citing *Green v. City of Tucson,* 255 F.3d 1086, 1099 (9th Cir. 2001) Only under 'quite limited circumstances' may *Younger* 'oust a district court of jurisdiction over a case where the plaintiff is not a party to an ongoing state proceeding.'*Green v. City of Tucson*, 255 F.3d at 1100. 'Such circumstances are present only when a federal plaintiff's interests are 'so intertwined with those of the state court party that ... interference with the state court proceeding is inevitable.'" supra. at 1035.

On the issue of "intertwined interests" sufficient to bar a federal plaintiff's action who is not a party to the ongoing state proceedings, the 9th Circuit Court has stated stressed that: "*Younger* is a circumscribed exception to mandatory federal jurisdiction; it is not intended to cut a broad swath through the fabric of federal jurisdiction relegating parties to state court litigation whenever state litigation could resolve a federal question." *Green v. City of Tucson*, 255 F.3d 1099. "Congruence of interests is not enough, nor is the identity of [legal] counsel…", to invoke

abstention. Id. at 1100. "Litigation in another case that presents 'essentially identical' interests to those of the [federal] plaintiff is not sufficient to bar a separate plaintiff pursuing his own lawsuit." *Richards v. Jefferson County,* 517 U.S. 793,796 (1996). Further, the fact that a federal plaintiff could have intervened in the state ongoing proceedings to assert his or her claim but did not, is insufficient to abstain under *Younger*. Id. at 800. Common legal counsel and similar business activities and problems between the state party and the federal plaintiff are insufficient to bar the federal plaintiff's action. *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 928 (1975). See also, *Steffel v. Thompson*, 415 U.S. 452 (1974)(two protesters who were both warned of arrest if they continued engaging in handbilling, one proceeded and was prosecuted and the other one was not but feared prosecution. The latter was not barred under *Younger* from filing a federal action for declaratory relief challenging the law prohibiting protesting through handbills in designated areas); *Women's Services et.al. v. Douglas*, 653 F.3d 355 (8th Cir. 1981)("Federal court was not required to abstain from considering challenge brought by physician and professional corporation to certain state abortion statutes, even though another physician employed by the professional corporation was facing state prosecution for violating this statute"); *Wooley v. Maynard*, 430 U.S. 705 (1977)(where a plaintiff is seeking wholly prospective relief from enforcement that would not interfere with an ongoing state proceeding, *Younger* abstention is not appropriate.)

The current case does meet the requirements or trigger the policy considerations for application of *Younger* abstention. The Tribe is not seeking to enjoin or interfere in Officer Johnson's criminal case. The Tribe is not a party to the current ongoing state criminal proceeding nor is the Tribe's interests so "intertwined" with those of defendant Officer Johnson that granting the Tribe declaratory relief will inevitably interfere with the state court's proceeding. The

ultimate outcome and result of the criminal case against Officer Johnson will be limited to the facts of that case and have no direct or controlling impact on the Tribe or its other law enforcement officers. While the Tribe is certainly interested in Officer Johnson's criminal case, the Tribe cannot become a party to such criminal proceedings in order to raise its tribal interests in protecting its inherent authority. As found by both Supreme Court and the 9th Circuit, "absent extraordinary circumstance, each plaintiff us entitled to his own day court and that therefore the mere existence of litigation brought by other parties with similar interests does not bar a plaintiff from pursing his own litigation." *Green v. City of Tucson*, 255 F.3d 1086, 1100 (9th Cir.2001), citing *Richards v. Jefferson County*, 517 U.S. 793 (1996).

3. The Anti-Injunction Act is not applicable to the Tribe's case and is not a basis for dismissal.

The District Attorney provides little substantive argument to his defense that the Tribe's case must be dismissed because the Anti-Injunction Act (AIA), 28 U.S.C. § 2283, except to state that the AIA bars a federal court from granting an injunction to stay proceedings in state court and that the AIA applies to declaratory judgments if those judgments have the same effect as an injunction. As discussed at length above, the Tribe is not seeking to enjoin the pending criminal prosecution of Office Johnson. The Tribe's request for injunctive relief is *prospective* and intended to prevent future arrests and prosecutions its law enforcement officers who are authorized to restrain and detain non-Indians who have or are committing a crime on the Reservation. Further, the District Attorney has proffered no factual argument, and the Tribe fails to see any which would support a claim that it's declaratory relief, if grant, will have essentially the same impact and result as this court ordering a stay enjoining the current prosecution of Officer Johnson.

Finally, the Supreme Court has found that the AIA and its predecessors "do not preclude injunctions against the institution of state court proceedings, but only bar stays of suits already instituted. See Ex parte Young, supra." Dombrowski v. Pfister, 380 U.S. 479, 484, FN 2 (1965)

CONCLUSION

Defendants have failed to establish that the Tribe's case must be dismissed for failure to state a claim. The Tribe's complaint has set forth sufficient factual and legal grounds establishing that defendants, by and through their actions, violated and threaten to continue to violate the Tribe's inherent authority and federal law over non-Indians committing crimes and violating tribal law on tribal lands.

The Tribe has demonstrated that the Inyo County Sheriff is a County official with final policymaking authority, thereby making the County responsible for the Sheriff's actions in arresting the Tribe's police officer and for issuing his "Cease and Desist" order on January 6, 2015. The Sheriff's "Cease and Desist" order legally mischaracterizes the actions taken by the Tribe's police officers as being violations of state law and that they are impersonating state officers, which has caused the Tribe to seek declaratory and prospective relief from the court. Finally, neither the Eleventh Amendment, the *Younger v. Harris* abstention doctrine nor the Anti-Injunction Act bars the Tribe's action against the District Attorney. The Tribe is not seeking a stay to enjoin the pending criminal proceedings against Tribal Police Officer Daniel Johnson, its injunctive relief is for prospective relief and its declaratory relief will not interfere with or have the effect of an injunction on the pending criminal case.

Defendants' Motions to Dismiss should be denied.

DATE May 19, 2015

CALIFORNIA INDIAN LEGAL SERVICES

By: /s/ Dorothy Alther
Dorothy Alther

/s/ Jasmine Andreas
Jasmine Andreas
Attorneys for the Plaintiff