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15 Attorneys for Plaintiff
16 BISHOP PAIUTE TRIBE

17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA

19 BISHOP PAIUTE TRIBE
20 Plaintiff,
21 vs.
22 INYO COUNTY; WILLIAM LUTZE, Inyo
23 County Sheriff; THOMAS HARDY, Inyo
24 County District Attorney.
25 Defendants.

26) Case No. 1:15-CV-00367--GEB
27)
28) PLAINTIFF'S CONSOLIDATED
OPPOSITION TO DEFENDANTS'
DECLARATION OF JOHN KIRBY IN
SUPPORT OF ALL DEFENDANTS'
PENDING REPLIES TO PLAINTIFF'S
CONSOLIDATED OPPOSITION TO
MOTIONS TO DISMISS AMENDED
COMPLAINT.
)
) Date: June 29, 2015
) Time: 9:00 A.M.
) Dept: 10-Sacramento
) District Judge: Hon. Garland E. Burrell

30 PLAINTIFF'S CONSOLIDATED OPPOSITION TO DEFENDANTS' DECLARATION OF
31 JOHN KIRBY IN SUPPORT OF ALL DEFENDANTS' PENDING REPLIES TO
32 PLAINTIFF'S CONSOLIDATED OPPOSITION TO MOTIONS TO DISMISS AMENDED
33 COMPLAINT.

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INTRODUCTION

Pending before the Court are Defendants' individual Motions to Dismiss, the Tribe's Consolidated Opposition to the Motions to Dismiss and the Defendants' Replies. On June 1, 2015, Defendants filed a Declaration of their legal counsel, John Kirby, entitled Support of all Defendants' Pending Replies to Plaintiff's Consolidated Opposition to Motions to Dismiss Amended Complaint ("Declaration.") Attached to the Declaration is the Tribe's January 15, 2015 letter response to Defendant Inyo County Sheriff William Lutze's *Cease and Desist order* that was sent to the Tribe on January 6, 2015. The Tribe does not object to the submission of the January 15, 2015 letter. However, the Tribe objects to the Defendants' excerpting statements contained in the letter to incorporate new and ultra vires dismissal arguments that should have been previously pleaded. Defendants' embedded arguments to dismiss the Tribe's case on the grounds of mootness and the lack of a case or controversy are without foundation and cannot augment their pleadings.

LEGAL ARGUMENT

A. The Tribe's Case is not Moot and does Present a Case or Controversy.

Defendants have submitted the Tribe's January 15, 2015 letter to Defendant Lutze in support of its new and additional grounds for dismissal. (Declaration Exhibit A). Defendants have excerpted select statements from the Tribe's letter which was submitted in good faith, to infer that there is no case or controversy in the present case. The first statement selected by the Defendants is that the Tribe has agreed that its law enforcement officers will not exercise

1 California peace officer authority on or off the reservation. The Declaration also relies on the
2 Tribe's statement that its officers will carry firearms only on the Bishop Paiute Reservation,
3 except when tribal officers must traverse State Hwy 168 and U.S. Highway 395 to access the
4 reservation while performing patrol duties and when they are traveling to and from work.
5 Further, the Tribe states that its officers have been directed that the Tribe does authorize them to
6 carry firearms off the reservation and may only do so in compliance with state law. Based on
7 these statements, Defendants now argue that the Tribe has met all the demands set forth in
8 Defendant Lutze's *Cease and Desist order* and thus there is no longer a case or controversy and
9 the Tribe's case should be dismissed as moot. Defendants have taken the Tribe's statements out
10 of context, and the January 15, 2015 letter read as a whole clearly demonstrates there is a case
11 and controversy before the Court.
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14 The Tribe's January 15, 2015 letter reiterates the allegations being made by Defendant
15 Lutze against the Tribe's law enforcement officers and the Tribe clearly states: "... we disagree
16 with your presentation of the of the facts, and your interpretation of the of applicable law ..."

17 The Tribe further states in its letter that:
18

19 As you know, it is essential that all police officers, both county and tribal, understand
20 *the scope of their legal authority* and how they are expected to conduct themselves both
21 on and off the reservation. *It is also important that our tribal police officers be allowed*
22 *to perform their legal duties without fear or expectation of criminal prosecution.*
23 (Declaration Exhibit A) (*Emphasis added*).

24 After transmitting its January 15, 2015 letter, the Tribe had hoped that discussions with
25 Defendant Lutze and Defendant Thomas Hardy would resolve the agencies' respective law
26 enforcement duties and applicable law, unfortunately such discussions did not. The Tribe's
27 Complaint for Declaratory Relief seeks to accomplish what it set forth in its January 15th letter---

1 clarification of applicable law, the scope of its officers' law enforcement duties and their ability
2 to perform those duties without fear or expectation of criminal prosecution. The Tribe's law
3 enforcement officer continues to be criminally prosecuted for actions he took during the
4 performance of his lawful duties under tribal authority and federal law. There also remains a
5 fundamental difference between the Tribe's and the Defendants' interpretation of federal law
6 with regard to what actions the Tribe can take against a non-Indian on the reservation who has or
7 is in violation of tribal, state and/or federal law, that affects public safety. Without Declaratory
8 Relief, the Tribe has no assurance that Defendants will refrain from future arrests and
9 prosecutions of tribal officers for carrying out their lawful duties. Clearly, the Tribe's case is not
10 moot and presents a case and controversy.
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13 **CONCLUSION**

14 Defendants' request for dismissal of the Tribe's case on the grounds of mootness and
15 failure to present a case or controversy should be denied.
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20 DATE June 16, 2015

CALIFORNIA INDIAN LEGAL SERVICES

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22
23 By: /s/ Dorothy Alther

Dorothy Alther

24
25 /s/ Jasmine Andreas

Jasmine Andreas

Attorneys for the Plaintiff

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27 Page 4

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PLAINTIFF'S CONSOLIDATED OPPOSITION TO DEFENDANTS' DECLARATION OF
JOHN KIRBY IN SUPPORT OF ALL DEFENDANTS' PENDING REPLIES TO
PLAINTIFF'S CONSOLIDATED OPPOSITION TO MOTIONS TO DISMISS AMENDED
COMPLAINT.

EXHIBIT A

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

13 Attorneys for Defendants COUNTY OF INYO; INYO COUNTY SHERIFF WILLIAM
14 LUTZE; AND INYO COUNTY DISTRICT ATTORNEY THOMAS HARDY

15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA

17 BISHOP PAIUTE TRIBE,
18 Plaintiff,

19 vs.

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

24 Defendants.

) Case No. 1:15-CV-00367 GEB-JLT
)
) DECLARATION OF JOHN D. KIRBY
) IN SUPPORT OF ALL DEFENDANTS'
) PENDING REPLIES TO PLAINTIFF'S
) CONSOLIDATED OPPOSITION TO
) MOTIONS TO DISMISS AMENDED
) COMPLAINT
)
) Date: June 29, 2015
) Time: 9:00 a.m.
) Courtroom: 10 – Sacramento

District Judge: Hon. Garland E. Burrell
Magistrate: Hon. Jennifer L. Thurston
Complaint Filed: 3/6/15
Trial Date: Not Set

1 The undersigned, John D. Kirby, submits the following Declaration, along with that
2 certain position-letter dated January 15, 2015, from plaintiff BISHOP PAIUTE TRIBE
3 (“Tribe”) to defendant SHERIFF WILLIAM LUTZE, which letter is attached hereto as Exhibit
4 A, in support of the respective Replies filed herein by defendants COUNTY OF INYO, Inyo
5 County SHERIFF WILLIAM LUTZE, and Inyo County DISTRICT ATTORNEY THOMAS
6 HARDY:

7 1. I am an attorney at law, licensed to practice law before all of the Courts of the
8 State of California, and am admitted to practice law before the United States District Court for
9 the Eastern District of California. During my more than 39 years of practicing law, I have
10 appeared before and presented cases to California Municipal Courts, California Superior
11 Courts, and to various California Courts of Appeal, and on the federal side, to multiple District
12 Courts, the Court of Appeals for the Ninth Circuit, and the Supreme Court of the United
13 States.

14 2. I am one of the attorneys of record representing defendants COUNTY OF INYO,
15 Inyo County SHERIFF WILLIAM LUTZE, and Inyo County DISTRICT ATTORNEY
16 THOMAS HARDY in this case. All of the information set forth in this Declaration is true of
17 my own knowledge, and if called upon to testify in this matter, I could and would competently
18 testify to the matters herein.

19 3. I acquired such knowledge by personally representing all defendants in this case,
20 by discussing this case with each of the defendants and their designated representatives, and
21 by reviewing various files and documents provided to me by the defendants and their
22 representatives which pertain to this case, and to the events leading up to, and subsequent to,
23 the filing of plaintiff’s original Complaint and plaintiff’s Amended Complaint herein.

24 4. In reviewing both plaintiff’s original Complaint, and Amended Complaint, I
25 observed that each Complaint contained, as Exhibit 3 thereto, a copy of a letter-order dated
26 January 6, 2015, from defendant SHERIFF WILLIAM LUTZE to Deston Rogers, the Police
27 Chief of the Bishop Paiute Tribal Police Department (the “January 6, 2015, letter”). It is this
28

1 January 6, 2015, letter that serves as the gravamen of plaintiff's pending Amended Complaint
2 and request for relief therein.

3 5. The Sheriff's January 6, 2015, letter first recites the facts and history that led to
4 the writing and issuance of the letter, and the letter then sets forth two primary directives – or
5 orders – to the Bishop Paiute Tribal Police Department. It is these two directives – or orders –
6 that serve as the basis of the Tribe's Amended Complaint. These two orders were for tribal
7 police officers to immediately (1) stop exercising – or “to cease and desist” – the “unlawful
8 exercise of California peace officer authority both within and outside tribal property,” and (2)
9 to “cease and desist possessing firearms outside tribal property (e.g. court appearances).” See
10 page 2 of Sheriff's letter, Exhibit 3 to Amended Complaint.

11 6. The Tribe did not attach to either its Complaint or to its Amended Complaint any
12 response to the Sheriff's January 6, 2015, letter.

13 7. On May 27, 2015, I was for the first time made aware that the Tribe had issued a
14 response to the Sheriff's January 6, 2015, letter.

15 8. The Tribe's response letter was dated January 15, 2015, and the response was
16 provided to me in connection with discussing with the Sheriff and his staff an issue that had
17 developed in Bishop, CA, the preceding weekend. The issue that was being discussed
18 involved a Bishop Paiute tribal police officer who was either patrolling or visiting along the
19 streets of Bishop, CA, in Inyo County, not on tribal property, while wearing the Tribe's police
20 uniform and while openly displaying and carrying a firearm – a pistol.

21 9. The Tribe's January 15, 2015, response to the Sheriff's January 6, 2015, letter is
22 attached to this Declaration as Exhibit A, and provides in part, in the third paragraph of page 1
23 thereof, that in order to keep the peace:

24 “... we have directed our tribal police officers to ensure that the
25 matters outlined in your January 6, 2015 letter are addressed.
26 Specifically, our tribal law enforcement officers will not exercise
27 California peace officer authority on or off the reservation. In
28 addition, our tribal police officers will carry their firearms only on
the Bishop Paiute Indian Reservation with the exception of: (a) daily

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patrols that require them to cross State Hwy 168 and when traversing U.S. Highway 395, and (b) traveling to and from their homes off the reservation. The officers have been directed that they are not authorized by the Tribe to expose their firearms off reservation except in compliance with applicable state law.”

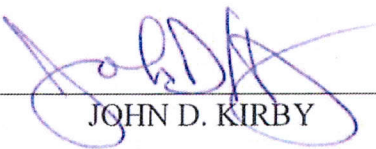
10. The Tribe’s January 15, 2015, response and position-letter with regard to the Sheriff’s January 6, 2015, letter, which January 6 letter is the basis of this lawsuit and the Tribe’s request for relief, thus appears to address and resolve the directives of the Sheriff’s letter.

11. This resolution raises the issue of mootness of this litigation, and subject matter jurisdiction, as well as accompanying justiciability, and further speaks to and underscores the issue of ripeness, as well as the issue of existence of an actual case or controversy with a real life fact-basis that is subject to adjudication by this Court. It also speaks to the position of all defendants, as set forth in their Replies, that declaratory relief is here inappropriate with respect to the abstract principle of law that the Tribe seeks to have adjudicated.

12. For these and all other reasons and purposes which may be deemed relevant by the Court, the Tribe’s attached January 15, 2015, position-letter to Inyo County Sheriff William Lutze is herewith presented .

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: June 1, 2015



JOHN D. KIRBY

EXHIBIT A



BISHOP TRIBAL COUNCIL

January 15, 2015

VIA REGULAR U.S. MAIL and EMAIL

William Lutze
Inyo County Sheriff's Office
P.O. Drawer "S"
Independence, CA 93526

Re: **Response to January 6, 2015 Letter**

Dear Sheriff Lutze:

The Bishop Paiute Tribe ("Tribe") is in receipt of your January 6, 2015 Letter directing our Bishop Tribal Police Department (Tribal Police) to cease and desist: (1) "the unlawful exercise of California peace officer authority both within and outside tribal property"; and (2) "possessing firearms outside of tribal property (e.g. court appearances)."

From your letter, we understand that you are concerned that our tribal police officers have acted "illegally" and have "endangered the public welfare." While we disagree with your presentation of the facts, and your interpretations of applicable law, we understand that your concerns are motivated by a legitimate desire to protect the public, a desire that we share. We believe that by working together, we can reach an understanding that is mutually agreeable and beneficial to all involved parties. The Tribal Council and our Chief of Police would like to meet with you in person within the next couple of days to begin working toward this goal.

As a show of good faith and to keep the peace, we have directed our tribal police officers to ensure that the matters outlined in your January 6, 2015 letter are addressed. Specifically, our tribal law enforcement officers will not exercise California peace officer authority on or off the reservation. In addition, our tribal police officers will carry their firearms only on the Bishop Paiute Indian Reservation with the exception of: (a) daily patrols that require them to cross State Hwy 168 and when traversing U.S. Highway 395, and (b) traveling to and from their homes off the reservation. The officers have been directed that they are not authorized by the Tribe to expose their firearms off reservation except in compliance with applicable state law.

We are happy to hear that the Sheriff's Office remains committed to working cooperatively with the Tribe and our Tribal Police Department. We too have enjoyed the cooperative professional relationship and remain committed to its continuation. We intend to take full advantage of the assistance that your office has offered in achieving Bureau of Indian Affairs, Special Law Enforcement Commission status for our officers.

EXHIBIT A
PAGE 6 OF 7

Inyo County Sheriff – 1.15.2015

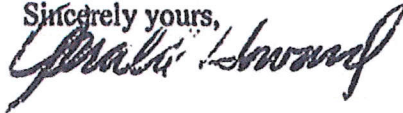
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PHONE (760) 873-3584 • FAX (760) 873-4143

Exhibit A
Page 1 of 2

As you know, it is essential that all police officers, both county and tribal, understand the scope of their legal authority and how they are expected to conduct themselves both on and off the reservation. It is also important that our tribal police officers be allowed to perform their legal duties without fear or expectation of criminal prosecution.

For all of these reasons, we believe that time is of the essence and that these matters should be addressed as soon as practical. Please let us know when you will be available over the next couple of days to meet to discuss these matters in person. It is our sincere hope that by working together we can achieve a mutually agreeable resolution of these matters, which serves our shared goal of protecting the public.

Sincerely yours,



Gerald Howard, Bishop Tribal Chairman

cc: Deston Rogers, Tribal Chief of Police, Bishop Paiute Tribal Council

EXHIBIT A
PAGE 7 OF 7

Inyo County Sheriff – 1.15.2015

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Exhibit A
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