

1 TERESA M. McGOWAN, CA Bar No. 145823
2 Principal Assistant County Counsel
3 JEAN-RENE BASLE, CA Bar No. 134107
4 County Counsel
5 385 North Arrowhead Avenue, 4th Floor
6 San Bernardino, CA 92415-0140
7 Telephone: (909) 387-5283
8 Fax: (909) 387-4069
9 *tmcgowan@cc.sbcounty.gov*

10 Attorneys for Defendants, JOHN McMAHON, RONALD SINDELAR,
11 MICHAEL RAMONS, JEAN RENE BASLE and MILES KOWALSKI

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 CHEMEHUEVI INDIAN TRIBE, on
15 its own behalf and on its members
16 *parens patriae*, CHELSEA LYNN
17 BUNIM, TOMMIE ROBERT
18 OCHOA, JASMINE SANSOUCIE,
19 and NAOMI LOPEZ,

20 Plaintiffs,

21 vs.

22 JOHN McMAHON, in his official
23 capacity as Sheriff of San
24 Bernardino County, RONALD
25 SINDELAR, in his official capacity as
26 Deputy Sheriff for San Bernardino
27 County, MICHAEL RAMOS, in his
28 official capacity as the District of San
Bernardino County, JEAN RENE
BASLE, in her official capacity as
County Counsel for San Bernardino

Case No. 5:15-cv-01538-DMG
(FFMx)

**OPPOSITION TO APPLICATION
FOR RESTRAINING ORDER
AND REQUEST FOR JUDICIAL
NOTICE; DECLARATION OF
MILES KOWALSKI IN SUPPORT
THEREOF**

Assigned to District Judge Dolly M.
Gee

1 County, and MILES KOWALSKI, in)
 2 his official capacity as Deputy)
 3 County Counsel for San Bernardino)
 4 County,)
 5 Defendants.)

6 Defendants oppose Plaintiffs’ application for a Temporary Restraining
 7 Order (TRO), for the following reasons:

8
 9 **I.**
 10 **THE APPLICATION FOR TRO IS PROCEDURALLY DEFECTIVE**

11 Plaintiffs’ request for a TRO does not include a prepared order
 12 stating the reasons for its issuance, specific terms of the order and the
 13 specific acts to be restrained. Plaintiffs did not give security for the TRO.
 14 See Fed.R.Civ.Pro. §65(c) and (d). Under the Local Rules, Plaintiffs are
 15 required to serve a proposed TRO and a proposed order to show cause
 16 why a preliminary injunction should not issue. Plaintiffs’ merely prepared
 17 points and authorities arguing various points, but any such orders were not
 18 specified in the clear detail required by the Local Rules.

19 Plaintiffs have been seeking dismissal of the traffic citations for
 20 several months now. Accordingly, clear and concise Orders are
 21 necessary in this matter as plaintiffs appear to request several actions
 22 from several County entities including the Sheriff’s Department, District
 23 Attorney’s Office, and Office of County Counsel.

24 **II.**
 25 **THERE IS NO URGENCY TO THE REQUESTED RELIEF**

26 Courts should take into account whether a moving party proceeded
 27 as quickly as it could have in seeking a TRO. Courts consider whether the

1 movant would have been able to file a noticed preliminary injunction
2 motion had it acted diligently. *Berjikian v. Franchise Tax Bd.*, No. CV 13-
3 06301 DDP JCGX, 2013 WL 4677772, at * 1 (C.D. Cal. Aug. 30, 2013);
4 *Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1325 (Fed. Cir. 2012));
5 *Rosal v. First Fed. Bank of California*, No. C 09-1276 PJH, 2009 WL
6 837570, at *1 (N.D. Cal. Mar. 26, 2009) (“[T]he court finds that plaintiff’s
7 delay in requesting a TRO militates against its issuance.”).
8

9 Here, Plaintiffs declarations cite to traffic citations issued in February
10 and May of 2015. Plaintiffs could have brought several fully noticed
11 motions for injunctive relief. These traffic citations have been in the court
12 system for months. At least one of the open citations has recently been
13 continued by the District Attorney so that this Federal matter can be
14 litigated and resolved. (See Declaration of Miles Kowalski.) Plaintiffs’
15 claims that they are being discriminated against and cited on a patented
16 section of the Chemehuevi Indian Reservation is disputed by Defendants
17 and has already been the subject of motion practice in at least one of the
18 traffic matters.
19

20 **III.**
21 **THE ISSUES OF TRAFFIC CITATION AND CRIMINAL PROCESS OVER**
22 **THE SUBJECT ROAD IS DESERVING OF FULL BRIEFING AND**
23 **CONSIDERATION BY THIS COURT**

24 Plaintiffs have waited several months to bring this TRO. Their failure
25 to request a more expeditious resolution of this matter militates against the
26 claims for irreparable harm. The claim as requested in the TRO is
27 unspecified and vague leading to the potential loss of any traffic controls
28

1 on the roadway which is travelled by local residents and visitors who are
2 not tribal members. Defendants request a full opportunity to brief this
3 court on their reasons for citing all drivers on the roadway who violate the
4 Vehicle Code and their understanding that the portions of the roadway
5 where Plaintiffs were cited are not within the boundaries of the
6 Chemehuevi Reservation.

7 The citation issued in the Bunim case was issued on a County
8 maintained road, on land that is not held in trust by the federal government
9 as part of a reservation for the Chemehuevi Tribe, and in a neighborhood
10 where the residents pay property taxes to the County. (See County
11 Counsel’s Brief in Opposition to Plaintiff’s Motion to Dismiss and
12 Demurrer, and Exhibit A thereto attached to the Exhibit of Miles Kowalski).

13 **IV.**

14 **REQUEST FOR JUDICIAL NOTICE**

15 Defendants request this court take Judicial Notice pursuant to Rule
16 201 of the Federal Rules of Evidence, of the following documents filed in
17 Case and Citation No. 3457605CB, in the Superior Court of the State of
18 California, County of San Bernardino – Joshua Tree District:

- 19 1. Defendant’s Memorandum of Points and Authorities in Support of
20 Motion to Dismiss for Lack of Subject Matter Jurisdiction or, in the
21 Alternative, Demurrer: filed on April 21, 2015;
- 22 2. County Counsel’s Brief in Opposition to Defendant’s Motion to
23 Dismiss for Lack of Subject Matter Jurisdiction and Demurrer; and the
24 attached Exhibits and Declarations in Support, filed on May 18, 2015;
25 and
- 26 3. Defendant’s Reply to County Counsel’s Brief in Opposition To Motion
27

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

to Dismiss filed on May 27, 2015.

The attached documents more fully explain the extensive arguments involved in this controversy, including documents that exhibit the boundary lines associated with plaintiffs' claims in this court. Due to the actual controversy that exists in Plaintiffs' claims, Defendants request a full opportunity to provide evidence and testimony into whether or not Plaintiffs' claims are correct.

V.

CONCLUSION

Since Plaintiffs' claims are procedurally defective and do not comply with the Local Rules and because Plaintiffs have not demonstrated irreparable harm, Defendants request this court Deny the TRO. Defendants will cooperate in a stipulation with plaintiffs for further briefing on the motion for injunctive relief, or comply with any time limitations ordered by this court.

Dated: August 10, 2015

JEAN-RENE BASLE
County Counsel

/s/ Teresa M. McGowan
TERESA M. McGOWAN
Principal Assistant County Counsel
Attorney for Defendants
JOHN McMAHON, RONALD SIDELAR,
MICHAEL RAMOS, JEAN RENE
BASLE and MILES KOWALSKI