

JACK DURAN, SBN 221704
DURAN LAW OFFICE
4010 Foothills Blvd., S-103, N.98
Roseville, CA 95747
Telephone: (916) 779-3316; Facsimile: (916) 520-3526
duanlaw@yahoo.com

ANDREA SEIELSTAD, PRO HAC VICE
C/O UNIVERSITY OF DAYTON SCHOOL OF LAW
Law Clinic, 300 College Park
Dayton, OH 45469-2750
Telephone: (937) 229-3817; Facsimile: (937) 229-4066
aseielstad1@udayton.edu

Attorney for Petitioners:

Ron Napoles, Laurine Napoles, Rick Napoles, Mark Napoles,
James Napoles, Debra Williams, Wade Williams

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

RONALD NAPOLES, LAURINE NAPOLES,
RICK NAPOLES, MARK NAPOLES,
JAMES NAPOLES, DEBRA WILLIAMS
WADE WILLIAMS,

Petitioners,

v.

DESTON ROGERS, JEFF ROMERO, BRIAN
PONCHO, EARLEEN WILLIAMS, WILLIAM
BILL VEGA, IN THEIR INDIVIDUAL AND
OFFICIAL CAPACITIES AS
REPRESENTATIVES OF THE BISHOP
PAIUTE TRIBAL COUNCIL; BISHOP
PAIUTE TRIBAL COUNCIL; BISHOP
PAIUTE TRIBAL COURT AND TRIBAL
COURT JUDGE BILL KOCKENMEISTER,
IN HIS INDIVIDUAL OFFICIAL CAPACITY,

Respondents.

Case No. 2:13-cv-02101-TLN-CKD

PETITIONERS' OPPOSITION TO
RESPONDENT WILLIAM
KOCKENMEISTER'S MOTION TO DISMISS
UNDER FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(1) & (6)

Date: June 20, 2017

Time: 9:30 a.m.

Judge: Dale Drozd

Courtroom: 5

Action Filed: December 29, 2016

Trial Date: TBD

PETITIONERS' OPPOSITION TO RESPONDENT WILLIAM KOCKENMEISTER'S MOTION

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. FACTUAL BACKGROUND	1
III. LEGAL STANDARD.....	1
IV. ARGUMENT.....	2
A. Officials sued for prospective injunctive or declaratory relief are not protected by sovereign immunity.....	3
B. Absolute judicial immunity only applies to claims for monetary damages.....	7
V. CONCLUSION	10

TABLE OF AUTHORITIES

Page

CASES

<i>Ashelman v. Pope</i> , 793 F.2d 1072 (9th Cir.1986)	6
<i>Balistreri v. Pacific Police Dept.</i> , 901 F.2d 696, 699 (9th Cir. 1988)/.....	1
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544, 555 (2007).....	1
<i>Brunette v. Dann</i> , 417 F.Supp. 1382 (D. Idaho 1976)	8
<i>Crowe & Dunlevy, P.C. v. Stidham</i> , 609 F.Supp.2d 1211 (U.S. D.Ct., N.D. Oklahoma, 2009)	7
<i>Edelman v. Jordan</i> , 415 U.S. 651 (1974); <i>Ex Parte Young</i> , 209 U.S. 123 (1908)..	5
<i>Gaming World Int'l, Ltd. v. White Earth Band of Chippewa Indians</i> 317 F.3d 840, 850 (8th Cir.2003).....	9
<i>Guam Soc. of Obstetricians & Gynecologists v. Ada</i> , 962 F.2d 1366, 1371 (9th Cir.1992)	6
<i>Means v. Navajo Nation</i> , 420 F.3d 1037 (2005).....	4
<i>Mitchum v. Foster</i> , 407 U.S. 225, 92 S.Ct. 2151, 32 L.Ed.2d 705 (1972)	9
<i>Paeste v. Government of Guam</i> , 798 F.3d 1228, 1234-35 (9 th Cir. 2015).....	6
<i>Pulliam v. Allen</i> , 466 U.S. 522, 104 S.Ct. 1970, 1980-81, 80 L.Ed.2d 565 (1984)	6
<i>Safe Air for Everyone v. Meyer</i> , 373 F.3d 1035, 1039 (9th Cir. 2004).....	1
<i>Santa Clara Pueblo v. Martinez</i> , 436 U.S. 49 (1978).....	3, 8
<i>U.S. v. Blackfeet Tribe of Blackfeet Indian Reservation</i> 369 F.Supp. 562 (D. Montana 1973).....	9
<i>United States v. McLeod</i> , 385 F.2d 734 (5th Cir. 1967)	9
<i>Will v. Michigan Department of State Police</i> , 491 U.S. 58 (1989)	4

TABLE OF AUTHORITIES (continued)

	Page
STATUTES	
25 U.S.C. §1302	7
25 U.S.C. §1303	7, 8
28 U.S.C. §1331.....	1, 10
28 U.S.C. §1343.....	1, 10
42 U.S.C. §1983	4

I. INTRODUCTION

This memorandum focuses on the argument and authority presented in the Motion to Dismiss filed by Respondent Kockenmeister (hereinafter “Kockenmeister Motion”) with regard to whether as tribal judge he enjoys immunity in either an official and/or individual capacity. A separate Opposition Memorandum has been submitted in response to Respondent Bishop Paiute Tribal Council (hereinafter “BTC”) and its members. It addresses in depth the issues of exhaustion and jurisdiction under the Indian Civil Rights Act (hereinafter “ICRA”), 25 U.S.C. Section 1303, as well as 28 U.S.C. Section 1331 and 1343, presented by both sets of parties. For the sake of efficiency, Petitioners reference and incorporate all facts and arguments contained in that response regarding jurisdiction and exhaustion under ICRA and focus this memorandum on the issues of immunity unique to Respondent Kockenmeister’s Motion.

II. FACTUAL BACKGROUND

Petitioners direct the court to the factual background provided in their Opposition Memorandum to BTC’s Motion. Facts specifically related to the issue of judicial immunity will be discussed in analyzing the legal arguments below.

III. LEGAL STANDARD

Respondent mounts a facial attack on the pleadings. Kockenmeister Motion at 1, citing *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Rule 12(b)(6) requires that the complaint present a cognizable legal theory and factual allegations enough to raise the right to relief above the speculative level are also not in dispute. *Balistreri v. Pacific Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations and footnotes omitted).

1 **IV. ARGUMENT**

2 Respondent Kockenmeister is a critical actor in Petitioners' detention and the
 3 deprivation of their rights under ICRA. As detailed in the First Amended Complaint ("FAC")
 4 and accompanying exhibits, he relentlessly pursued a course of action against Petitioners that
 5 deviates from what is expected of a judge in any jurisdiction, compromises judicial
 6 independence and the integrity of the judicial process and fails in his duty to afford due process
 7 and other rights guaranteed by ICRA in the proceedings brought to the courts by the Bishop
 8 Paiute Tribal Council ("BTC") as well as in actions taken on his own initiative such as the
 9 issuance of the Temporary Protection Order ("TPO") . As judge of the tribal court, decisions
 10 and documents generated by him have an unusual force of authority that has actively restrained
 11 Petitioners and controlled their freedom and movement. Moreover, he has acted in clear
 12 derogation of jurisdiction and judicial authority, acting as a decisive and powerful advocate of
 13 the Bishop Tribal Council throughout the various proceedings and overtly refusing to apply the
 14 authority of the tribal appellate court as well as federal and even tribal law. Indeed, Respondent
 15 himself emphasizes many of the ways Judge Kockenmeister has violated Petitioners' rights
 16 under ICRA and caused their detention in his own Motion. Kockenmeister Motion at n. 1 and
 17 accompanying text.

18
 19 As Respondent also asserts, "a majority of the circuits 'look to the substance of the
 20 plaintiff's claim, the relief sought, and the course of proceedings to determine the nature of[]a
 21 suit when a plaintiff fails to allege capacity.'" Kockenmeister Motion at 3, citing *Biggs*, 66 F.3d
 22 at 59. Respondent agonizes rather unnecessarily about whether he should be considered to have
 23 been sued in his individual or official capacity. The distinction is really only relevant with

1 respect to claims for monetary damages, and there is no basis for immunity under any capacity
 2 or theory of this case.¹

3 This is a federal habeas action brought under ICRA. The relief sought in Petitioners'
 4 Complaint is clearly that what may be afforded under habeas corpus. Although Respondents'
 5 Motion reminds Petitioners of the possibility of exploring legal action for damages in a separate
 6 action some point in the future, Petitioners do not at this stage of the proceedings articulate
 7 causes of action other than ICRA or seek relief in the form of monetary damages. The
 8 distinction is a red herring, as the operative issue that must be resolved at this point is whether §
 9 a cause of action exists under 1303 sufficient to invoke the court's jurisdiction.

12 **A. Officials sued for prospective injunctive or declaratory relief are not protected**
 13 **by sovereign immunity.**

14 If the requirements of 1303 have been met, as Petitioners' pleadings and Oppositions to
 15 Respondents' Motions to Dismiss on that point establish that they do, then a cause of action
 16 exists under ICRA, any sovereign immunity attributable to the Tribe has been congressionally
 17 abrogated, and any tribal official or entity acting in derogation of its provisions may be subject
 18 to suit. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). That includes tribal judicial
 19 offers as well. For example, in *Means v. Navajo Nation*, 420 F.3d 1037 (2005) 432 F.3d 924
 20
 21

22
 23
 24 ¹ Counsel's unnecessary reference to an email that Petitioners' attorneys apparently "refused
 25 meaningfully to respond [to]" invents meaning from silence on one particular point amidst a voluminous
 26 chain of emails and phone discussions exchanged between counsel over the past many months about a
 27 myriad of issues and is a disappointing professional choice. Counsel's efforts to bring private
 28 communications between counsel to the court's attention also violates expectations of privilege typically
 afforded to negotiation communications and basic standards of professionalism that call for restraint in
 this regard. The law of immunity and the pleadings of the case determine the outcome of this motion,
 not what may have been said or unsaid in counsel's email communication.

1 (9th Cir. 2005) the court determined that pretrial detention of Mr. Means was enough to invoke
2 federal habeas jurisdiction under ICRA. That action, moreover, was brought against the Navajo
3 Nation, the judge of the judicial district court, and the Chief Justice of the Navajo Nation. No
4 issue was raised about the capacities of any of these Defendants, and the court found there to be
5 habeas jurisdiction under 1303 by virtue of Mr. Means' conditions of pretrial release imposed
6 by the Respondents. *Id.* There is no unique provision for a judge to get special exemption under
7 ICRA, and, indeed, Respondent offers no authority in support of said proposition.
8
9

10 That Respondent Kockenmeister is being sued in this habeas action in his official
11 capacity for declaratory and prospective injunctive relief necessary to effectuate habeas is not in
12 dispute. Motion at 3. Clearly, a Petition for Habeas Corpus is most concerned about correcting
13 the deprivations of liberty and underlying rights violations invoking declaratory and injunctive
14 relief. As such, it is the kind of official capacity suit brought in other statutory contexts, such as
15 42 U.S.C. Section 1983 (hereinafter, "§ 1983"), against those acting in derogation of
16 fundamental civil rights with the aim of correcting the orders, conduct and procedure that
17 creates the rights deprivations. Neither judicial immunity, nor sovereign immunity, apply in
18 those circumstances.
19
20

21 The cases relied upon by Respondent as a means of suggesting that Respondent
22 Kockenmeister enjoys some kind of special sovereign immunity protection by virtue of him
23 being a tribal judge are inapplicable to the circumstances of this case. The key case cited by
24 him for this proposition is *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989).
25 *Will* is a case involving statutory interpretation of § 1983. It addresses whether a state official is
26 a "person" for the purposes of that act. The court concludes that it is not a person based on an
27
28

PETITIONERS' OPPOSITION TO RESPONDENT WILLIAM KOCKENMEISTER'S MOTION

1 interpretation of that Congressional legislation in light of the state's immunity from suit under
2 the 11th Amendment. Accordingly, it holds that in a suit for monetary damages under § 1983, a
3 suit against a state official in his or her official capacity will be construed as a case against the
4 state as a sovereign entity.
5

6 This case, obviously, is not a § 1983 action, nor is it one for monetary damages. *Will*
7 and its progeny, therefore, are wholly inapposite to it. The 11th Amendment protects
8 governments from suits for damages impacting their financial treasuries, not suits for
9 prospective injunctive relief. It has been established by the Supreme Court in the context of
10 state sovereign immunity that injunctive and declaratory relief against state officials does not
11 violate the Eleventh Amendment, but that the Constitution only prohibits retroactive monetary
12 damages. *Edelman v. Jordan*, 415 U.S. 651 (1974); *Ex Parte Young*, 209 U.S. 123 (1908).
13 The Supreme Court even recognized this principle in *Santa Clara*: "As an officer of the Pueblo,
14 petitioner Lucario Padilla is not protected by the tribe's immunity from suit. . . . We must
15 therefore determine whether the cause of action for declaratory and injunctive relief asserted
16 here by respondents, though not expressly authorized by the statute, is nonetheless implicit in its
17 terms." *Santa Clara, supra*, at 59.
18

19 This exception for declaratory and prospective injunctive relief has been applied with
20 respect to other sovereignties as well. For example, in a suit involving whether an official
21 capacity suit could be brought against an official of the territory of Guam, the 9th Circuit held:
22

23 Even if Guam enjoys sovereign immunity, of whatever sort, from the Taxpayers' § 1983
24 claim, that claim was not brought against Guam itself, but only against its officers in
25 their official capacities, and only for declaratory and injunctive relief. Under the
26 principle of *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908)
27
28

1 [REDACTED], ‘official-capacity actions for prospective relief are not treated as actions
2 against’ Guam itself.

3 *Paeste v. Government of Guam*, 798 F.3d 1228, 1234-35 (9th Cir. 2015) quoting *Guam Soc. of*
4 *Obstetricians & Gynecologists v. Ada*, 962 F.2d 1366, 1371 (9th Cir.1992) (internal quotation
5 marks omitted).
6

7 Similarly, as the 9th Circuit affirmed in *Means*, the exception has been widely
8 acknowledged with respect to tribal officials, including judges. *See, Means v. Navajo Nation*,
9 *supra*, as well. For example in upholding a federal district court’s enjoining of a tribal judge
10 from enforcing restraining orders he had entered, the 9th Circuit unequivocally stated: “His
11 status as a tribal judicial officer does not confer immunity against injunctive relief.” *U.S. v.*
12 *Yakima*, 794 F.2d 1402 (9th Circuit 1986), citing *United States v. Blackfeet Tribe*, 369 F.Supp.
13 562, 565 (D.Mont.1973). Furthermore, stated the court: “That defense [of judicial immunity]
14 does not bar injunctive relief against a judicial officer acting in his judicial capacity.” *Id.* citing
15 *Pulliam v. Allen*, 466 U.S. 522, 541-42, 104 S.Ct. 1970, 1980-81, 80 L.Ed.2d 565 (1984);
16 *Ashelman v. Pope*, 793 F.2d 1072 (9th Cir.1986) (en banc).
17
18
19

20 In *Pulliam v. Allen*, 466 U.S. 522, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984), plaintiffs
21 brought suit under §1983, claiming that a magistrate’s practice of imposing bail was
22 unconstitutional. They sought injunctive relief. The Supreme Court addressed the “fundamental
23 question [of] whether a judicial officer acting in her judicial capacity should be immune from
24 prospective relief,” *id.* at 528, 104 S.Ct. 1970, and held that “judicial immunity is not a bar to
25 prospective injunctive relief against a judicial officer [REDACTED] acting in her judicial
26 capacity.” *Id.* at 541–42, 104 S.Ct. 1970.
27
28

PETITIONERS' OPPOSITION TO RESPONDENT WILLIAM KOCKENMEISTER'S MOTION

1 In response to this decision, Congress enacted the Federal Courts Improvement Act of
 2 1996 (“FCIA”), Pub.L. No. 104–317, 110 Stat. 3847, which amended the language of § 1983 so
 3 as to bar injunctive relief against a judicial officer in a § 1983 action “for an act or omission
 4 taken in such officer's judicial capacity ... unless a declaratory decree was violated or
 5 declaratory relief was unavailable.” *Id.* at § 309(c). Not only is the scope of this Act in dispute,
 6 courts consistently have clarified that it does not apply beyond the scope of § 1983 to other
 7 types of actions against judicial officers. There is no argument that it applies to tribal judges
 8 either. See *Crowe & Dunlevy, P.C. v. Stidham*, 609 F.Supp.2d 1211 (U.S. D.Ct., N.D.
 9 Oklahoma, 2009), affirmed by *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140 (10th Cir.
 10 2017).

11 Thus, the general principal that judicial immunity is not a bar to prospective injunctive
 12 relief against judges acting in an official capacity remains intact, and there is no authority for
 13 exempting tribal judges from this rule. It is clearly and unequivocally possible for a tribal judge
 14 to be sued in his official capacity for declaratory and prospective injunctive relief, and the court
 15 should accordingly deny Respondents’ Motion on that ground. If Petitioners’ have been
 16 detained under Section 1303 of ICRA, which they contend that they have been, a cause of
 17 action exists under ICRA, and the common law sovereign immunity generally enjoyed by the
 18 Bishop Paiute Tribe and its officials, including judicial officers, would be abrogated.

19 **B. Absolute judicial immunity only applies to claims other for monetary damages.**

20 Absolute judicial immunity is a defense that exists only in the context of suits for
 21 monetary damages based upon wrongful actions taken by a judge under color of law. Indeed,
 22 and this point must be emphasized, the cases cited by Respondent on the proposition of judicial
 23

immunity are all about whether a judge may be liable in a civil suit for damages, a fundamental prerequisite to the defense. Claims for prospective injunctive relief or other non-monetary forms of relief, like habeas proceedings, are not eligible for the absolute immunity defense for judicial officers.

The cases cited by Respondent in arguing for judicial immunity do not contradict this fundamental legal point. Motion at 5-6. *Cadena v. Perasso* surely does not. Although it is not about a tribal judge, the case clarifies that judicial immunity only applies to claims for damages. 498 F.2d 383 (9th Circuit 1974) (“498 F.2d 383 (“A judicial officer is clearly immune from liability for damages for his judicial actions.”) (emphasis added). In *Brunette v. Dann*, 417 F.Supp. 1382 (D. Idaho 1976), a summary judgment decision in a case for civil liability for damages, the court stated: “No direct authority for judicial immunity as applied in a tribal setting has been found or cited. However, the general doctrine and the reasoning and policy therefor as applied in s 1983 actions would appear to be applicable. The rule is that judges are immune from civil liability for damages for acts committed within their judicial jurisdiction.” In *Penn v. U.S.*, 335 F.3d 786, 789 (8th Cir. 2003), a suit for damages under the Federal Tort Claims Act and other causes of action arising out of various official’s enforcement of a tribal court order, the 8th Circuit also clarified that a tribal court judge is entitled to the same absolute judicial immunity that shields state and federal court judges, citing *Sandman v. Dakota*. 816 F.Supp. 448, 452 (W.D. Mich. 1992).² That protection, of course, is absolute immunity from

² Interestingly, Penn also recognizes the authority and responsibility of federal review of tribal court orders under Section 1303: Explains the court: “As Penn’s petition demonstrates, however, an order excluding a nonmember from a reservation is subject to review in federal district court under the habeas

1 civil damages suits. *See also, U.S. v. Blackfeet Tribe of Blackfeet Indian Reservation*, 369
 2 F.Supp. 562 (D. Montana 1973) ("I have considered the claim of judicial immunity. It applies
 3 only when judges are faced with damage suits arising out of the performance of official duty.
 4 The fact is that courts may be and are restrained from acting in excess of jurisdiction. At the
 5 federal level the main problem encountered in the injunctive relief area is the federal Anti-
 6 Injunction Act, 28 U.S.C. § 2283. Where that act is not controlling, and it does not control here
 7 because it is state courts, not tribal courts, which are protected by it, federal court injunctions do
 8 issue to restrain court actions. *See Mitchum v. Foster*, 407 U.S. 225, 92 S.Ct. 2151, 32 L.Ed.2d
 9 705 (1972), and *United States v. McLeod*, 385 F.2d 734 (5th Cir. 1967).")

12 Petitioners also allege facts sufficient to demonstrate how absolute judicial immunity
 13 would not apply even if a claim for damages was involved, i.e., (1) that at least certain of his
 14 actions were in complete absence of jurisdiction and/or (2) outside of a judicial capacity or
 15 function. For example, Respondent Kockenmeister issued the TRO after previously dismissing
 16 the identical action with prejudice and without anyone filing a Petition, Affidavit, or any other
 17 legal action initiating a cause of action before the court or its jurisdictional authority.
 18 Moreover, his order references VAWA and threatens Petitioners with federal prosecution
 19 should they violate it. FAC at paragraphs 94-103 and accompanying attachments. And he had
 20
 21
 22

23
 24
 25 corpus provisions of 25 U.S.C. § 1303. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 67–68, 98 S.Ct.
 26 1670, 56 L.Ed.2d 106 (1978). We have recognized “the long-standing federal policy supporting the
 27 development of tribal courts” for the purpose of encouraging tribal self-government and self-
 28 determination. *Gaming World Int'l, Ltd. v. White Earth Band of Chippewa Indians*, 317 F.3d 840, 850
 (8th Cir.2003). *Id.*

PETITIONERS' OPPOSITION TO RESPONDENT WILLIAM KOCKENMEISTER'S MOTION

1 no case or action filed in the court to resolve. In doing so, he clearly acted in a complete
2 absence of jurisdiction, not merely in excess of it. He also departed from his role as a judicial
3 officer, abdicating responsibility for applying and rendering decisions based upon law and fact
4 submitted by the parties in an impartial way to an approach of advocacy for the BTC.
5

6 However, since damages are not on the table at this point in time, there is no need to
7 address or resolve (1) whether absolute immunity applies or should apply to tribal judges to the
8 same extent as it does with other judges and/or (2) whether Respondent Kockenmeister would
9 be entitled to absolute immunity, if it did.
10

11 **V. Conclusion**

12 This case involves a habeas action under Section 1303 of the Indian Civil Rights Act.
13 The key issue is whether the court has jurisdiction under 28 U.S.C. Section 1331, 1343, and
14 Section 1303, which requires determining that Petitioners have been detained and was briefed
15 extensively in Petitioners' Opposition to BTC's Motion. The distinction made by Respondent
16 Kockenmeister in his Motion regarding official and individual capacity is largely irrelevant.
17 Neither sovereign immunity nor absolute judicial immunity applies to judicial officers outside
18 of suits for monetary damages. Those seeking prospective injunctive relief have long been
19 authorized against the individual officers of sovereign entities who would otherwise be entitled
20 to sovereign immunity. Furthermore, as long as 1303 grants a claim for habeas relief, which
21 Petitioners contend that it does in this case, then common law sovereign immunity is abrogated
22 for the Tribe and all of its officers, including its judicial officers.
23

24 Finally, there is no special immunity that applies to judges in actions of this nature.
25 Absolute judicial immunity only applies to suits for damages. Therefore, because this is a
26

27
28 PETITIONERS' OPPOSITION TO RESPONDENT WILLIAM KOCKENMEISTER'S MOTION

1 federal habeas action under ICRA and the requirements for detention and exhaustion have been
2 met, there is no basis to dismiss Petitioners' claims against any party, nor is there a special basis
3 to dismiss Respondent Kockenmeister from this action based upon his position as tribal judge.
4

5
6 Dated: June 5, 2017

DURAN LAW OFFICE

7 By: /s/ Jack Duran
8 JACK DURAN

9
10 PRO HAC VICE:

11 By: /s/ Andrea Seielstad
12 *Attorneys for Petitioners*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PETITIONERS' OPPOSITION TO RESPONDENT WILLIAM KOCKENMEISTER'S MOTION