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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

APRIL JAMES, EUNICE WEARINGER, STEVE BRITTON, and ROUND VALLEY INDIAN TRIBES,

Plaintiffs,

v.

MATTHEW KENDALL, Sheriff of Mendocino County; COUNTY OF MENDOCINO; WILLIAM HONSAL, Sheriff of Humboldt County; JUSTIN PRYOR, deputy of Humboldt County Sheriff's Office; COUNTY OF HUMBOLDT; SEAN DURYEE, Commissioner of the California Highway Patrol; CALIFORNIA HIGHWAY PATROL; and DOES 1 through 50,

Defendants.

1:25-cv-03736-RMI

DEFENDANT COMMISSIONER SEAN DURYEE'S NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT

(Fed. R. Civ. P. 12(b)(1) and 12(b)(6))

Date: September 9, 2025
Time: 2:00 p.m.
Judge: The Honorable Robert M. Illman
Trial Date:
Action Filed: 4/29/2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS

COURT RULES

OTHER AUTHORITIES

NOTICE OF MOTION AND MOTION TO DISMISS

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 9, 2025, in the above-entitled court, Defendant Commissioner Sean Duryee ("Commissioner Duryee"), in his individual capacity and his official capacity as Commissioner of the California Highway Patrol ("CHP"), will and hereby does move to dismiss all claims asserted against him in the First Amended Complaint ("FAC") pursuant to Federal Rules of Civil Procedure rules 12(b)(1) and 12(b)(6).

This Motion is brought pursuant to Rule 12(b)(1) and Rule 12(b)(6) on the following grounds: (1) Plaintiffs lack Article III standing to pursue prospective relief against Commissioner Duryee because the CHP did not participate in the challenged search and poses no threat of future enforcement; (2) Plaintiffs fail to state a claim upon which relief can be granted because the FAC does not allege personal involvement, policy implementation, or any plausible theory of liability as to Commissioner Duryee; (3) Plaintiffs allege merely that Commissioner Duryee is the Commissioner of the California Highway Patrol but do not identify any alleged duty or authority in connection with the actions taken in this matter, or *any* alleged wrongful conduct. As a result, the FAC - against Commissioner Duryee - warrants dismissal because Plaintiffs cannot legitimately invoke the *Ex parte Young* exception to Commissioner Duryee's immunity from suit under the U.S. Constitution's Eleventh Amendment (hereinafter, the "Eleventh Amendment"); and (4) Plaintiffs cannot recover money damages as to Commissioner Duryee because such claims are barred by the Eleventh Amendment.

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This Motion is based on this Notice, the Memorandum of Points and Authorities in support thereof, the papers and pleadings on file in this action, and such oral argument as may be presented at the hearing.

Dated: August 19, 2025

Respectfully submitted,

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/s/ Justin T. Buller

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs bring suit to enjoin the enforcement of state cannabis laws on tribal allotments within the Round Valley Indian Reservation. However, they assert no facts linking Commissioner Duryee, or the CHP, to the alleged unlawful conduct. CHP, and accordingly Commissioner Duryee, did not participate in the July 22–23, 2024, search warrant operation conducted by the Mendocino County and Humboldt County Sheriff's Offices. In fact, of the entire 147-paragraph FAC, only one paragraph alleges that CHP vehicles were merely seen in the area on July 23, 2024, *the day after the alleged unlawful conduct had occurred*, and there are absolutely no allegations to support that CHP "collaborated in planning, organizing and executing raids on the Plaintiffs' properties on the Reservation in Indian country, . . ." (FAC, ¶¶ 37 [quoted], 48.) Indeed, there is no specific factual allegation that Commissioner Duryee was involved in or directed any action concerning the Plaintiffs and the search warrant at issue. Moreover, the FAC does not identify any alleged duty or authority that Commissioner Duryee has over the enforcement of state cannabis laws on tribal lands, nor any alleged wrongful conduct committed by Commissioner Duryee in this matter. As a result, the FAC – against Commissioner Duryee – warrants dismissal because Plaintiffs cannot legitimately invoke the *Ex parte Young* exception to Commissioner Duryee's Eleventh Amendment immunity.

Accordingly, the claims against Commissioner Duryee must be dismissed for lack of standing, ripeness, and immunity because Plaintiffs fail to state a claim for relief.

II. HISTORY AND STATUS OF CANNABIS IN CALIFORNIA

In 1996, California was the first state to legalize cannabis for medicinal use when voters passed Proposition 215. The Compassionate Use Act allowed qualified patients who possessed a recommendation from a licensed physician to use, possess, and cultivate cannabis for their personal use and exempted certain patients and their primary caregivers from criminal liability under state law. Cal. Health & Safety Code, § 11362.5.1. In 2016, California voters approved Proposition 64, which established a "comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana,

including marijuana products, for use by adults 21 years and older." California Courts, Proposition 64: The Adult Use of Marijuana Act, at https://www.courts.ca.gov/prop64.htm (as of Aug. 12, 2025).

In 2017, California's Legislature consolidated the state's medicinal and adult-use cannabis regulatory systems to create a single framework for medicinal and personal and commercial cannabis activity referred to as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). See Cal. Bus. & Prof. Code, § 26001; Cal. Health & Safety Code, §§11018, 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4.

Under MAUCRSA, both medicinal and adult-use cannabis fall within a "comprehensive system to control and regulate" commercial cannabis activity. Cal. Bus. & Prof. Code, § 26000, subd. (b); see generally Cal. Bus. & Prof. Code, § 26000, et seq, and Cal. Code Regs., tit. 4, §§ 15000, et seq. Essentially, cannabis is legal within certain parameters. As to the personal adult-use of cannabis, people 21 years of age and older can possess up to 28.5 grams of nonconcentrated cannabis or eight grams of concentrated cannabis, as well as grow six living plants, as specified. Cal. Health & Safety Code, §§ 11362.1, 11362.2, 11362.3, 11362.4. For medicinal use, a qualified patient with a health condition physician recommendation can use, purchase, and cultivate cannabis for personal medicinal purposes. Cal. Health & Safety Code, § 11362.5, subds. (b)(1)(A), (d).

In addition to the personal adult and medicinal uses of cannabis, California has legalized the commercial cultivation, distribution, processing, transportation, laboratory testing, and retail sale of cannabis pursuant to both the authorization of a local jurisdiction and state licensure. Cal. Bus. & Prof. Code, §§ 26001, subds. (m), (ai); 26033; 26037.5, 26200. To engage in such activity legally, a license must be obtained from and maintained with the California Department of Cannabis Control, and the licensee must comply with the requirements of MAUCRSA and regulations promulgated thereunder. Cal. Bus. & Prof. Code, §§ 26037.5, 26030, subd. (a); Health & Safety Code, § 11362.1; Cal. Code Regs., tit. 4, § 15000.1, subd. (a). Moreover, all commercial cannabis activity must be conducted between licensees, except as provided, and

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licensees must operate within the scope of their license. Cal. Bus. & Prof. Code, § 26053, subd. (a); Cal. Code Regs., tit. 4, § 15000.1, subds. (b) and (c).

Outside of the personal medicinal and adult-use exceptions and licensed commercial cannabis activity, cannabis is still a schedule I drug under both federal law (21 U.S.C. §§ 801-904, commonly known as the Controlled Substances Act) and California state law. Cal. Health & Safety Code § 11054, subd. (d)(13). Those who engage in commercial cannabis activity without a license, or those who aid and abet unlicensed commercial cannabis activities are subject to both civil and criminal penalties. Cal. Bus. & Prof. Code, §§ 26030, 26038, subds. (a), (e); see generally, Cal. Bus. & Prof. Code, §§ 26030-26039.6; Cal. Health & Safety Code §§ 11358, 11359, 11360. Under California law, acts such as possession for sale; planting, harvesting or processing; and unlawful transportation, importation, sale or gift of cannabis remain illegal outside of the legal framework discussed above. *Id.*

Relevant to tribal participation in the licensed cannabis industry, regulations were promulgated requiring a tribe, or tribal member, seeking commercial cannabis licensure to enter a limited waiver of sovereign immunity for purposes of state regulatory compliance inspections, and any state administrative enforcement action against the tribe, or tribal member, under state commercial cannabis laws and regulations.[1] Cal. Code of Regs., tit. 4, § 15009.

III. RELEVANT FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

The FAC alleges that the Humboldt County Sheriff's Office and the Mendocino County Sheriff's Office executed a search warrant on tribal lands on July 22 and 23, 2024, during which Plaintiffs' property was searched and items were seized. Plaintiffs assert Fourth and Fourteenth Amendment violations and claims under 42 U.S.C. § 1983 and various federal laws protecting tribal sovereignty. The only allegation contained in the FAC concerning CHP, and presumably Commissioner Duryee, is made by one Plaintiff, Eunice Swearinger, who observed CHP vehicles in the area on July 23, 2024, the day after the alleged unlawful conduct took place. (FAC ¶ 48.) Furthermore, Exhibit F to the FAC, the search warrant that Plaintiff April James claims was

[1] Plaintiffs do not claim to have a California state issued license to engage in commercial cannabis activity on Indian territory, neither do they claim to fall under the medicinal use requirements.

presented after her property was allegedly "unlawfully searched, seized and destroyed," was based upon an affidavit by Humboldt County Sheriff's Office Deputy Justin Pryor and *makes no mention* of coordination, assistance, or any type of involvement with Commissioner Duryee or the CHP. (FAC, ¶ 57, Exhibit F attached thereto.) In summary, no specific action by Commissioner Duryee is alleged. The Complaint does not plead facts that Commissioner Duryee, or any other CHP officers, entered the property or enforced cannabis laws.

On May 21, 2025, Plaintiff dismissed CHP from the action entirely and dismissed the fourth through seventh causes of action as to Commissioner Duryee. (ECF, 16 and 17.) The FAC alleges only the first, second, and third causes of action as to Commissioner Duryee. Thus, by way of this motion to dismiss, Commissioner Duryee seeks dismissal from the first, second, and third causes of action, the only remaining causes of action brought against him in both his individual and official capacities.

IV. LEGAL STANDARD

A. Fed. R. Civ. P. 12(b)(1)

Federal Rule of Civil Procedure, rule 12(b)(1) (hereinafter, "Rule 12(b)(1)") permits dismissal of a complaint for lack of subject-matter jurisdiction. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (*Safe Air*). A Rule 12(b)(1) motion may be a facial attack asserting "that the allegations in the complaint are insufficient on their face to invoke federal jurisdiction." *Safe Air*, 373 F.3d at 1039. Even though a Rule 12(b)(1) motion is brought by a litigant seeking dismissal of an adverse complaint for lack of subject-matter jurisdiction, "[t]he [opposing] party asserting jurisdiction has the burden of proving all jurisdictional facts." *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990) (*citing McNutt v. Gen. Motors Acceptance Corp*., 298 U.S. 178, 189 (1936). In effect, the court presumes lack of jurisdiction until the party invoking the court's jurisdiction proves otherwise. *Kokkoen v. Guardian Life Ins. Co. of Amer*., 511 U.S. 375, 377 (1994).

B. Fed. R. Civ. P. 12(b)(6)

A defendant is entitled to dismissal of an action under Federal Rule of Civil Procedure, rule 12(b)(6) (hereinafter, "Rule 12(b)(6)") where the plaintiff (1) has failed to state a cognizable legal

theory, or (2) has alleged insufficient facts under a cognizable legal theory. *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). In evaluating a Rule 12(b)(6) motion, the court accepts as true all material facts alleged in the complaint and interprets them in the light most favorable to the non-moving party. *Gant v. Cnty. of L.A.*, 772 F.3d 608, 614 (9th Cir. 2014). However, the court does not accept as true "unreasonable inferences or assume the truth of legal conclusions cast in the form of factual allegations." *Ileto v. Glock Inc.*, 349 F.3d 1191, 1200 (9th Cir. 2003); *see also Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (explaining that the court need not "accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences").

"Vague and conclusory allegations of official participation in civil rights violations are not sufficient to withstand a motion to dismiss." *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (holding that to survive a Rule 12(b)(6) motion to dismiss, the pleading's "[f]actual allegations must be enough to raise a right to relief above the speculative level"). Further, Plaintiffs seeking to impose liability on a public official under 42 U.S.C. section 1983 must allege that the official "through the official's own individual actions, has violated the Constitution." *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009).

C. Applications of Fed. R. Civ. P. 12(b)(1)

A Rule 12(b)(1) motion is appropriately used to resolve at least two kinds of subject-matter jurisdiction issues which are applicable here: (1) allegations must be sufficient enough to plausibly – not merely possibly – allow the reasonable inference that the defendant is liable for the misconduct alleged, and/or (2) immunity under the Eleventh Amendment to the U.S. Constitution.

1. Sufficient Facts and Allegations

To survive a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(1) and/or Rule 12(b)(6), a complaint must contain more than a "formulaic recitation of the elements of a cause of action;" it must contain factual allegations sufficient to "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. The court need not accept legal conclusions as

true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The complaint must contain sufficient factual matter, accepted as true, to plausibly – not merely possibly – allow the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* at 678-679.

The Court may consider exhibits attached to the complaint and incorporated by reference, (*see Petrie v. Electronic Game Card, Inc.*, 761 F.3d 959, 964 n.6 (9th Cir. 2014), Fed. R. Civ. P. 10(c)), but is not required to blindly accept conclusory allegations, unwarranted deductions of fact, or unreasonable inferences, nor accept as true allegations that are contradicted by the exhibits attached to the complaint. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

2. Eleventh Amendment Immunity

The Eleventh Amendment generally bars lawsuits in federal courts against officials of U.S. states, without the officials' consent. *See Cardenas v. Anzai*, 311 F.3d 929, 934 (9th Cir. 1999); *Artichoke Joe's v. Norton*, 216 F. Supp. 2d 1084, 1110-11 (E.D. Cal. 2002). Eleventh Amendment immunity is properly determined on a Rule 12(b)(1) motion. *See Sofamor Danek Group, Inc. v. Brown*, 124 F.3d 1179, 1183 n.2 (9th Cir. 1997).

V. ARGUMENT

A. Plaintiffs Lack Standing and Their Claims Are Unripe

Plaintiffs' claims for injunctive and declaratory relief must be dismissed for lack of Article III standing and because they are unripe. Standing requires a plaintiff to allege facts showing an injury in fact that is concrete and particularized, fairly traceable to the defendant's conduct, and likely to be redressed by a favorable decision. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). When a plaintiff seeks prospective relief against a government official, the alleged injury must be both "real and immediate," not conjectural or hypothetical. *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983). Courts have repeatedly held that "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief." *O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974).

Here, Plaintiffs allege no specific act by Commissioner Duryee (or CHP) that caused their alleged harm. They do not allege specific facts that Commissioner Duryee (or CHP) was

involved in the execution of the July 22–23, 2024, search warrant, nor that Commissioner Duryee ordered, approved, participated, or had any role in any cannabis enforcement action on tribal land. In fact, and to the contrary, Exhibit F to the FAC undisputedly establishes that neither Commissioner Duryee, nor CHP, was involved with the Humboldt County Sheriff's Office's search warrant and affidavit. The FAC merely alleges CHP was present in the area on July 23, 2024. This does not support standing for injunctive relief. Nor do Plaintiffs plausibly allege any credible or imminent threat that Commissioner Duryee, or CHP, will engage in future enforcement against them. Thus, any claim of future injury is purely speculative and fails to meet the constitutional requirements for standing. Without an actual or threatened enforcement action by Commissioner Duryee or CHP, Plaintiffs' claims are not ripe for review. See *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc) (ripeness and standing both require a concrete dispute, not an abstract disagreement about the law). Accordingly, Plaintiffs' claims against Commissioner Duryee should be dismissed under Rule 12(b)(1).

B. Plaintiffs Fail to State a Claim Against Commissioner Duryee

Even assuming jurisdiction existed, Plaintiffs' claims against Commissioner Duryee must be dismissed for failure to state a claim under Rule 12(b)(6). As set forth above, the FAC contains no factual allegations establishing that Commissioner Duryee personally participated in, directed, approved, was involved, or was even aware of the law enforcement activity giving rise to Plaintiffs' claims. Liability under 42 U.S.C. § 1983 cannot be imposed based on a supervisory role alone. To state a valid claim, Plaintiffs must plead facts showing that the defendant, "through [his] own individual actions, has violated the Constitution." *Ashcroft v. Iqbal*, 556 U.S. 662, 676–77 (2009). Moreover, vague and conclusory allegations, which do raise a right of relief beyond a speculative level, are not sufficient to withstand a motion to dismiss. *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The FAC does not meet this burden.

The only reference to CHP in the FAC is a vague assertion that three CHP vehicles were observed on July 23, 2024. (FAC, ¶ 48.) The FAC does not allege *any* facts, let alone specific

and sufficient facts, that CHP or Commissioner Duryee participated in any way in the search. The FAC is also devoid of any explanation, context, or nature of the CHP's presence on the tribal allotments within the Round Valley Indian Reservation. Bottomline, Plaintiffs offer no facts nor allegations suggesting any CHP officer entered their property, participated in the execution of the search warrant, and/or engaged in any cannabis-related enforcement. Notwithstanding, and even without any such factual clarification, the allegations in the FAC fail to establish any plausible claim against Commissioner Duryee.

Moreover, Plaintiffs have not alleged any ongoing policy, practice, or custom by CHP of enforcing cannabis laws on tribal land, nor do they plausibly claim that Commissioner Duryee is responsible for any such policy. To obtain prospective relief against a state official under *Ex parte Young*, 209 U.S. 123 (1908), a plaintiff must show an "ongoing violation of federal law" and a sufficiently direct connection between the official's duties and the alleged unlawful conduct. *Los Angeles Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992). Here, Plaintiffs identify no such connection. They do not allege specific facts that either Commissioner Duryee or CHP implemented or participated in the search warrant plan or participated in the destruction or seizure of Plaintiffs' property. Without allegations of personal involvement, or a policy traceable to Commissioner Duryee, the FAC fails to state a claim against him. Further, even if Plaintiffs intended to bring an official-capacity claim for declaratory or injunctive relief, they fail to allege any "policy, custom, or usage" of the CHP that would trigger liability. See, *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). The FAC instead relies on conclusory references and speculative inferences, unsupported by concrete facts. Threadbare recitals and legal conclusions do not suffice. *Iqbal, supra,* 556 U.S. at 678. Because Plaintiffs fail to plausibly allege any personal or policy-based misconduct by Commissioner Duryee, all claims against him should be dismissed.

C. Commissioner Duryee Should Be Dismissed as He is Entitled to Eleventh Amendment Immunity and the Ex Parte Young Exception Does Not Apply

Plaintiffs' FAC against Commissioner Duryee should be dismissed because it does not meet the pleading requirements set forth in Rule 8 and Commissioner Duryee is entitled to sovereign

immunity. Rule 8 requires a plaintiff to set forth a short and plain statement of each of its claims showing that it is entitled to relief, as well as allegations that are simple, concise, and direct. Fed. R. Civ. P., §§ 8(a)(2), 8(d)(1); *see also Hearns v. San Bernardino Police Dep't*, 530 F.3d 1124, 1127 (9th Cir. 2008) (characterizing the requirements set forth in Rule 8(a)(2) as a "right and duty of a plaintiff initiating a case"). Dismissal is appropriate if a complaint does not comply with these pleading requirements. *Knapp v. Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013). Even applying liberal pleading standards, "pleadings nonetheless must meet some minimum threshold in providing a defendant with notice of what it is that it allegedly did wrong." *Brazil v. U.S. Dep't of Navy*, 66 F.3d 193, 199 (9th Cir. 1995). Hence, Rule 8 mandates that Plaintiff allege facts that demonstrate how it was denied its constitutional rights, *and by whom*. *See Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 512 (2002) (reiterating that Rule 8(a)(2) requires complaints to contain a statement that gives each defendant "fair notice of what the plaintiff's claim is and the grounds upon which it rests")

Plaintiff's FAC fails to satisfy those pleading requirements. Other than identifying Commissioner Duryee as the "Commissioner of the California Highway Patrol," the FAC does not plead being facts or allegations that he engaged in alleged wrongful conduct and/or that he has any involvement with, the execution of the search warrant. In short, and among other things, the complete lack of such facts and allegations precludes Commissioner Duryee from mounting a defense to Plaintiffs' purported claims. Moreover, at a minimum, Rule 8 mandates that Plaintiffs identify the responsible party or parties and allege facts that connect the identified responsible party or parties to a violation of law. Such a *minimum* pleading requirement would provide Commissioner Duryee fair notice of what the Plaintiffs' claims are and the factual basis upon which they rest. As illustrated above, the complete lack of any facts or allegations pled against a party is simply not permissible under the Federal Rules of Civil Procedure.

Moreover, as to Commissioner Duryee, sovereign immunity generally prohibits lawsuits against states and state officers in federal court. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). Sovereign immunity bars all suits against the state regardless of the relief sought, including declaratory and injunctive relief. *See id.* at 101; *Seminole Tribe of Fl. v.*

Florida, 517 U.S. 44, 58 (1996). State sovereign immunity applies unless the state has unequivocally consented to such a suit or Congress has abrogated the state's immunity. *See, e.g.*, *Church v. Missouri*, 913 F.3d 736, 743 (8th Cir. 2019). Neither has happened here.

The Supreme Court has recognized a limited exception to Eleventh Amendment sovereign immunity in *Ex parte Young*, 209 U.S. 123 (1908), which permits actions for prospective declaratory or injunctive relief against state officers sued in their official capacities for their alleged violations of federal law. Even assuming *Ex parte Young's* exception can apply to overcome a state's general sovereign immunity, its requirements are not met here. For the *Ex parte Young* exception to apply, the state official sued must have direct responsibility for enforcement of the allegedly unconstitutional statute. *Okpalobi v. Foster*, 244 F.3d 405, 416-417 (8th Cir. 2001) (en banc); *Summitt Med. Assocs. P.C. v. Pryor*, 180 F.3d 1326, 1341-42 (11th Cir. 1999). General executive responsibility or general enforcement powers are not enough. *See, e.g.*, *Church*, 913 F.3d at 748; *Fitts v. McGhee*, 172 U.S. 516, 530 (1899); *L.A. Cty. Bar Ass'n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992).

Here, Plaintiffs fails to allege a sufficiently direct connection with Commissioner Duryee and the administration or enforcement of cannabis laws on tribal lands. Plaintiffs solely cite to Commissioner Duryee being in-charge of the California Highway Patrol. (FAC, ¶ 6.) But courts have repeatedly held that such general powers are not sufficient to establish the connection required for application of the *Ex parte Young* exception. "It is well established that 'a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision will not subject an official to suit.'" *Nichols v. Brown*, 859 F. Supp. 2d 1118, 1131–32 (C.D. Cal. 2012) (quoting *Snoeck v. Brussa*, 153 F.3d 984, 986 (9th Cir. 1998)); *see also Los Angeles Branch NAACP v. Los Angeles Unified School Dist.*, 714 F.2d 946, 953 (9th Cir. 1983) (holding the governor's "general duty to enforce California law ... does not establish the requisite connection between him and the unconstitutional acts" alleged in suit). Unless the state officer has some responsibility to enforce the statute or provision at issue, the "fiction" of *Ex parte Young* cannot operate. Only if a state officer has the authority to enforce an unconstitutional act in the name of the state can the Supremacy Clause be invoked to strip the

officer of official or representative character and subject them to the individual consequences of their conduct. *Long v. Van de Kamp*, 961 F.2d 151, 152 (9th Cir. 1992).

For a state official to be legitimately subject to a lawsuit in federal court challenging the official's oversight of a state law (in the "*Ex parte Young*" exception to the Eleventh Amendment), not only must the official have a "fairly direct" connection with the enforcement of the law, but also "there must be a real threat of enforcement… Absent a real likelihood that the state official will employ his [or her] powers against plaintiffs' interests, the Eleventh Amendment bars federal court jurisdiction." *Id.*; *Snoeck*, 153 F.3d at 987 ("[T]he officers of the state must…threaten or be about to commence civil or criminal proceedings to enforce an unconstitutional act"). For those reasons, Plaintiffs have failed to satisfy federal pleading requirements against Commissioner Duryee and furthermore, under the Eleventh Amendment jurisprudence cited above, Commissioner Duryee is immune to Plaintiffs' FAC.

D. Plaintiffs Cannot Seek Monetary Damages against the Commissioner

To the extent Plaintiffs seek monetary damages against Commissioner Duryee in his official capacity as Commissioner of the CHP, such claims are barred by the Eleventh Amendment to the United States Constitution. The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States" by its own citizens or citizens of another state. U.S. Const. amend. XI. This immunity extends to state agencies and to state officials acting in their official capacities when "the state is the real, substantial party in interest." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101–02 (1984); *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989) ("[N]either a State nor its officials acting in their official capacities are 'persons' under § 1983" when sued for damages). State sovereign immunity applies unless the state has unequivocally consented to such a suit or Congress has abrogated the state's immunity. See, e.g., *Church v. Missouri*, 913 F.3d 736, 743 (8th Cir. 2019). Neither has happened here.

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The CHP is an arm of the State of California, and Commissioner Duryee is a state official. A judgment awarding money damages against him in his official capacity would be paid from the State treasury and is therefore barred. *Edelman v. Jordan*, 415 U.S. 651, 663 (1974). The only narrow exception to Eleventh Amendment immunity, recognized in *Ex parte Young*, 209 U.S. 123 (1908), allows suits against state officials for prospective injunctive relief to end ongoing violations of federal law. That exception does not extend to retrospective monetary relief, even when styled as equitable in nature. *Green v. Mansour*, 474 U.S. 64, 68 (1985).

E. Because Plaintiffs Have Not pleaded a Viable Claim for Prospective Injunctive Relief against CHP, nor Alleged Any Ongoing Conduct by Commissioner Duryee that Violates Federal Law, and Because any Request for Damages is Retrospective and Would Operate Against the State Treasury, those Claims are Barred and Must be Dismissed under Rule 12(b)(1) for Lack of Subject-Matter Jurisdiction. Law Enforcement May Execute Search Warrants on Tribal Lands Under Public Law 280

Plaintiffs seek a declaratory judgment that state and county law enforcement may not execute criminal search warrants on tribal lands, specifically allotments within the Round Valley Indian Reservation. This claim directly conflicts with well-established federal law, namely, Public Law 280, Pub. L. No. 280, 67 Stat. 588 (1953), codified at 18 U.S.C. § 1162, which expressly grants California jurisdiction to enforce criminal laws in Native American country.

PL 280 provides that "[e]ach of the States… shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country" within the state "to the same extent that such State… has jurisdiction over offenses committed elsewhere within the State." 18 U.S.C. § 1162(a). California accepted this jurisdiction via California Penal Code § 830.1 and related statutes. Courts have consistently held that PL 280 authorizes state law enforcement, including sheriffs and highway patrol officers, to enforce state criminal laws within Indian country—even on trust or allotted lands, unless and until Congress or the tribe's governing body retrocedes jurisdiction, which has not occurred here. See *Walker v. Rushing*, 898 F.2d 672, 674 (8th Cir. 1990); *State v. Schmuck*, 850 P.2d 1332, 1343 (Wash. 1993); *People v. McCovey*, 36 Cal. 3d 517, 528 (1984).

The Ninth Circuit has affirmed that PL 280 was enacted to fill the law enforcement vacuum in Indian country by authorizing state and local officials to investigate, arrest, and prosecute

criminal activity involving Native Americans. See *Miller v. California*, 355 F.3d 1172, 1175 (9th Cir. 2004); *United States v. Becerra-Garcia*, 397 F.3d 1167, 1170 (9th Cir. 2005). This includes the execution of valid state search warrants supported by probable cause. *Quair v. Sisco*, 359 F. Supp. 2d 948, 976–77 (E.D. Cal. 2004) confirmed that "[a] state law enforcement officer acting under Public Law 280 has authority to enter Indian land pursuant to a valid search warrant." Plaintiffs cite no contrary controlling authority.

Nor does tribal sovereignty override PL 280's grant of jurisdiction. "It is within Congress's power to subject tribes to state criminal jurisdiction, as it did through Public Law 280." *United States v. High Elk*, 902 F.3d 842, 846 (8th Cir. 2018). The Supreme Court has repeatedly acknowledged that tribal sovereignty is not absolute and must yield to valid federal statutes. *Nevada v. Hicks*, 533 U.S. 353, 361–62 (2001); *United States v. Mazurie*, 419 U.S. 544, 557 (1975). In Public Law 280, Congress expressly authorized and granted California broad criminal jurisdiction and limited civil jurisdiction over all Indian country within the State of California. 18 U.S.C. § 1162(a); 28 U.S.C. § 1360. In *California v. Cabazon Band* (1987) 480 U.S. 202, 208 the Court recognized that some state statutes are "not so easily categorized" as criminal or civil, and that it is "not a bright-line rule…". A finding that engaging in unlicensed commercial cannabis activity is criminal/prohibitory in nature, is consistent with the public policy test required under *Cabazon* for assessing the nature of a statute. (*Id.* at 209; "The shorthand test [for determining whether a statute is criminal/prohibitory or civil/regulatory] is whether the conduct at issue violates the State's public policy."). In *Quechan Indian Tribe v. McMullen* (9th Cir. 1993) 984 F.2d 304, the Ninth Circuit relied on *Cabazon* and concluded that a California fireworks statute was criminal/prohibitory in nature and thus California had regulatory jurisdiction to enforce it on Indian territory. To reach that conclusion, the court specifically addressed the state's interest in public safety. *(Id.*, at pp. 307-308.) Similarly, here, California has a strong public policy interest in enforcing its laws related to commercial cannabis activity and preventing individuals from engaging illegally in such activity. In addition, California's laws ensure the health and welfare of Californians by requiring testing to ensure cannabis and cannabis products do not contain illegal and/or excessive residual pesticides, mold, or fungus; requiring tracking of

cannabis from seed to sale to prevent inversion or diversion of cannabis; and ensuring cannabis and cannabis products are not sold to minors. *See,* Cal. Bus. & Prof. Code, §§ 26067 – 26069; 26100 – 26110; *see also,* Health & Safety Code, § 11361.

Furthermore, Plaintiffs' reliance on general statements about tribal autonomy fails to address the specific jurisdictional framework Congress created. The fact that the land at issue may be allotted to, or is part of, the Round Valley Reservation does not divest California of criminal jurisdiction under PL 280. There is no indication that the Round Valley Tribe has petitioned for retrocession under 25 U.S.C. § 1323, nor has the federal government accepted such a request. Absent retrocession, California retains full concurrent jurisdiction to investigate and prosecute violations of its criminal laws.

Accordingly, the Court should reject Plaintiffs' request to declare that state law enforcement cannot execute search warrants on tribal land and dismiss the FAC against Commissioner Duryee.

F. The Personal Capacity Allegations Against Commissioner Duryee Should Be Dismissed

Plaintiffs named Commissioner Duryee in his "individual and official" capacities. The personal capacity allegations should be dismissed without leave to amend because they add nothing to the allegations against Commissioner Duryee in his official capacities, and they suffer the same fatal jurisdictional defects. Plaintiffs lacks Article III standing to sue Commissioner Duryee in his personal capacity because they cannot allege a concrete and particularized injury traceable to anything Commissioner Duryee did or did not do in his personal capacity. Plaintiffs have also failed to allege an Article III case or controversy against Commissioner Duryee in his personal capacity because the Court cannot effectively remedy any of Plaintiffs' claims against him.

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CONCLUSION

For the reasons discussed above, the Court should dismiss the First Amended Complaint against Commissioner Duryee without leave to amend.

Dated: August 19, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

Case Name: **James, et al. v. Kendall, et al.** No. **1:25-cv-03736-RMI**

I hereby certify that on August 19, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **DEFENDANT COMMISSIONER SEAN DURYEE'S NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 19, 2025, at Sacramento, California.

Bryn Barton	***/s/ Bryn Barton***
Declarant	Signature

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