DAVID B. DEHNERT (CA BAR NO. 214243)
DEHNERT LAW, PC
475 WASHINGTON BLVD.
MARINA DEL REY, CALIFORNIA 90292
TELEPHONE: 310.822.3222
FACSIMILE: 310.577.5277
EMAIL: DAVID@DEHNERTLAW.COM

LESTER J. MARSTON (CA BAR NO. 081030)
LAW OFFICE OF LESTER J. MARSTON
405 WEST PERKINS STREET
UKIAH, CALIFORNIA 95482
TELEPHONE: 707-462-6846
EMAIL: LJMARSTON@RMLAWOFFICE.NET

ATTORNEYS FOR PLAINTIFFS
APRIL JAMES, EUNICE SWEARINGER, STEVE BRITTON
AND ROUND VALLEY INDIAN TRIBES

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

APRIL JAMES, EUNICE SWEARINGER, 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.

Case No. 1:25-cv-03736-RMI

PLAINTIFFS' OPPOSITION TO DEFENDANT COMMISSIONER SEAN DURYEE'S MOTION TO DISMISS COMPLAINT

Date: October 14, 2025
Time: 11:00 a.m.
Crtrm: 1
Before: Honorable Robert M. Illman

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

California's status as a Public Law 280 ("PL 280") state limits its authority in Indian country to enforcing criminal/prohibitory laws; civil/regulatory laws—such as California's post-Proposition 64 cannabis licensing and taxation scheme—do not apply to Indians on their own lands. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

Yet Defendant, California Highway Patrol ("CHP") Commissioner Sean Duryee ("Duryee"), seeks dismissal of Plaintiffs' First Amended Complaint ("FAC") on the grounds of lack of Article III standing, ripeness, Eleventh Amendment immunity, failure to state a claim, and redundancy between official- and personal-capacity allegations. His arguments collapse under the weight of the FAC's detailed factual allegations and controlling precedent.

The FAC alleges an ongoing, coordinated enforcement campaign—planned and executed in concert with county sheriffs and other task-force members—in which CHP officers have participated in warrantless searches, seizures, and destruction of property on tribal trust allotments on the Round Valley Indian Reservation ("Reservation"), including Plaintiff Eunice Swearinger's allotment, based solely on the absence of state or county cannabis license. These raids, carried out under color of state law and without federal authorization, inflict concrete, imminent harm and present a credible threat of recurrence. They raise quintessential federal questions and issues of tribal sovereignty and self-governance that fall squarely within this Court's jurisdiction under 28 U.S.C. §§ 1331 and 1362, grounded in the Fourth and Fourteenth Amendments, 42 U.S.C. § 1983, the Indian Commerce Clause, PL 280 (18 U.S.C. § 1162; 28 U.S.C. § 1360), and federal common law.

Far from "vague assertions" of CHP presence, Motion to Dismiss ("MTD") at 17, the FAC alleges CHP's operational participation in the July 2024 raids, Duryee's statutory and operational authority over CHP enforcement priorities, training, and interagency coordination, and an ongoing, declared policy of enforcing state cannabis laws on tribal lands—laws that are civil/regulatory under *Cabazon* and thus far beyond PL 280's reach. These allegations satisfy Rule 8's notice-pleading standard, establish standing and ripeness, overcome Eleventh Amendment immunity under *Ex parte*

Young, and state viable claims against Duryee in both his official and personal capacities under the applicable supervisory-liability framework.

Defendant's MTD (Doc No. 46) would erase every avenue for redress the Plaintiffs seek—jurisdictional, constitutional, statutory, and procedural—despite the FAC's well-pleaded facts and the clear body of law affirming each of its claims. It should be denied in its entirety.

FACTS AND BACKGROUND

Plaintiffs incorporate by reference the "Facts and Background" section of their Opposition to Defendants Mendocino County and Sheriff Kendall's Motion to Dismiss (Doc. No. 48), as the events, legal context, and ongoing enforcement campaign described therein apply equally to the claims against Duryee.

As alleged in the FAC, on July 22 and 23, 2024, a coordinated, multi-agency task force—including the Humboldt County Sheriff's Office, the Mendocino County Sheriff's Office, and CHP—executed raids on tribal trust allotments within the Reservation. Plaintiffs' properties were searched, items seized, and crops destroyed without federal or tribal authorization, based solely on alleged violations of California's cannabis licensing and environmental laws. FAC ¶¶ 1, 30, 35–58, 63–65, 70, 76, Exs. A, G, H (Doc 35).

Duryee disingenuously contends that the "only" allegation concerning CHP is Plaintiff Eunice Swearinger's observation of CHP vehicles on July 23, 2024, and that no specific action by Duryee or CHP officers is pled. MTD at 13. But the FAC alleges more: Eunice Swearinger, her son, Felix, and her granddaughter, Joella, witnessed CHP officers' drive through Plaintiff Swearinger's trust allotment during the execution of a search warrant escorting tractors where crops on the property were destroyed. FAC ¶ 48. Eunice, Felix and Joella then witnessed the same CHP vehicles exit through the property from where the crops and equipment were destroyed after about 30 minutes. FAC ¶¶ 49-50. These allegations support a reasonable inference of CHP's operational participation in the enforcement action, consistent with Sheriff Kendall's public statements about working with a "task force" in cannabis raids and CHP's membership in the Unified Cannabis Enforcement Taskforce.[1] FAC ¶ 65, Ex. H.

[1] *See* https://cannabis.ca.gov/about-us/about-dcc/unified-cannabis-enforcement-taskforce-ucetf/.

While Exhibit F to the FAC reflects that the search warrant for Plaintiff April James's property was supported by an affidavit from a Humboldt County deputy, the absence of CHP's name from that affidavit does not negate the FAC's allegations of CHP's role in the coordinated enforcement campaign. *See* FAC at 86. The FAC alleges that CHP's participation was pursuant to policies, training, and interagency coordination overseen by Duryee, and that CHP's enforcement posture toward tribal lands is ongoing. FAC ¶¶ 6, 74-78, 81, 86, 92, 98-99.

Procedurally, Plaintiffs dismissed CHP as a separate defendant and dismissed the fourth through seventh causes of action as to Duryee on May 21, 2025 (Doc Nos. 16, 17). The FAC continues to allege the first, second, and third causes of action against Duryee in both his official and personal capacities—claims grounded in the Fourth and Fourteenth Amendments, 42 U.S.C. § 1983, and federal law protecting tribal sovereignty. These claims are supported by detailed factual allegations tying CHP's conduct to Duryee's authority and acquiescence, and they remain properly before the Court.

SUMMARY OF ARGUMENT

Duryee cannot escape liability for his role in an ongoing, coordinated enforcement campaign that violates federal law and tribal sovereignty. The FAC alleges—and Duryee does not meaningfully dispute—that CHP officers participated in warrantless searches, seizures, detentions, and property destruction on tribal trust allotments within the Reservation, based solely on the absence of state cannabis licenses. Because California's cannabis regime is licensure-driven—prohibition the exception—the absence of a state license is a regulatory condition under *Cabazon*, not a criminal/prohibitory offense. Under *Cabazon*, such civil/regulatory laws are unenforceable against Indians in Indian country under PL 280, and CHP's participation in enforcing them on tribal trust land exceeded PL 280's jurisdictional limits.

First, Plaintiffs have Article III standing and their claims are ripe. The FAC alleges concrete, particularized injuries and a credible threat of recurrence, supported by Defendant's own public enforcement posture.

Second, Eleventh Amendment immunity does not bar Plaintiffs' claims for prospective relief against Duryee in his official capacity under *Ex parte Young*, nor their claims for damages

against him in his personal capacity. The FAC plausibly alleges his supervisory authority over CHP enforcement priorities, training, and interagency coordination, and his deliberate indifference to the constitutional violations at issue.

Third, the FAC states claims under 42 U.S.C. § 1983, the Fourth and Fourteenth Amendments, the Indian Commerce Clause, and federal common law. It also states actionable state-law tort claims under the California Tort Claims Act, which require no implied constitutional cause of action.

Fourth, Plaintiffs' individual-capacity claims are not redundant. They hold Duryee personally accountable for violations of protected federal rights.

Finally, Duryee's attempt to recast the FAC as alleging only "vague assertions" of CHP involvement ignores the detailed factual allegations of CHP's operational participation in the July 2024 raids, its continuing enforcement policy, and Duryee's knowing disregard or acquiescence in CHP's conduct. At this stage, Rule 8 requires nothing more.

Because the FAC pleads facts that, if proven, establish jurisdiction, overcome immunity, and state viable claims for relief, the Duryee's motion should be denied in its entirety.

LEGAL STANDARD

A. Rule 12(b)(1)—Subject Matter Jurisdiction

Federal Rule of Civil Procedure 12(b)(1) authorizes dismissal for lack of subject-matter jurisdiction. A Rule 12(b)(1) motion may present a facial attack, asserting that the allegations in the complaint are insufficient on their face to invoke federal jurisdiction, or a factual attack, disputing the truth of the jurisdictional allegations. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In a facial attack, the Court accepts the allegations in the complaint as true and draws all reasonable inferences in the plaintiff's favor. *Warren v. Fox Family Worldwide, Inc.,* 328 F.3d 1136, 1139 (9th Cir. 2003).

Here, Defendants' Rule 12(b)(1) arguments are facial. They assert that Plaintiffs lack Article III standing, ripeness, immunity and that no federal law authorizes the declaratory and injunctive relief sought. *See* MTD at 11. The court must accept the FAC's allegations as true and construe them most favorably to the Plaintiffs. *Warren*, 328 F.3d at 1139. In addition, "imperfections in

pleading style will not divest a federal court of jurisdiction where the complaint as a whole reveals a proper basis for jurisdiction." *Loss v. Blankenship*, 673 F.2d 942, 950 (7th Cir. 1982).

In assessing jurisdiction where PL-280 is invoked, the Court must apply *Cabazon's* primary-intent test to determine whether the underlying state law is criminal/prohibitory or civil/regulatory. 480 U.S. at 209-12. Because California's cannabis laws make licensure the rule and prohibition the exception, they are civil/regulatory and outside PL-280's grant of jurisdiction.

B. Rule 12(b)(6)—Failure to State a Claim

Rule 12(b)(6) motions to dismiss for failure to state a claim are disfavored. *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003). They are "especially disfavored" where the complaint sets forth a novel legal theory "that can best be assessed after factual development." *McGary v. City of Portland,* 386 F.3d 1259, 1270 (9th Cir. 2004). A motion to dismiss for failure to state a claim fails if the complaint provides "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The Rule 8 pleading standard "does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id*. at 679.

Applying this standard, the Court should accept all well-pleaded facts in the FAC as true and then ask whether those facts state a plausible claim for relief. *See id*. The Defendant's fact-based arguments should therefore be disregarded. *See* MTD at 17-18. At this stage, Plaintiffs are entitled to all reasonable inferences, including that CHP's participation in the July 2024 raids was undertaken pursuant to a coordinated enforcement policy applying civil/regulatory cannabis laws in Indian country in violation of *Cabazon* and *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).

C. Section 1983 and Individual Liability

To state a claim under 42 U.S.C. § 1983 against a public official, a plaintiff must allege facts showing that the official, "through the official's own individual actions, has violated the Constitution." *Iqbal*, 556 U.S. at 676. At the pleading stage, such allegations may be established through direct participation or through setting in motion acts by others that the official knew or reasonably should have known would cause the constitutional injury. *Starr v. Baca*, 652 F.3d 1202, 1207-08 (9th Cir. 2011) ("[A] plaintiff may state a claim against a supervisor for deliberate indifference based upon the supervisor's knowledge of and acquiescence in unconstitutional conduct by his or her subordinates."). Ordering, authorizing, or knowingly acquiescing in unconstitutional raids constitutes direct participation under Ninth Circuit law. *Id.* at 1207.

D. Eleventh Amendment Immunity

The Eleventh Amendment generally bars suits in federal court against a state or its officials acting in their official capacities, absent consent or a valid abrogation by Congress. *Cardenas v. Anzai*, 311 F.3d 929, 934 (9th Cir. 2002). However, under *Ex parte Young*, 209 U.S. 123 (1908), the Eleventh Amendment does not bar suits for prospective declaratory or injunctive relief against state officials alleged to be violating federal law. This includes suits to enjoin the enforcement of civil/regulatory laws in Indian country where PL 280 provides no jurisdiction, as here.

ARGUMENT

I. PLAINTIFFS HAVE STANDING TO SEEK DECLARATORY AND INJUNCTIVE RELIEF, AND THEIR CLAIMS ARE RIPE

Plaintiffs have Article III standing because they have suffered an "injury in fact" that is causally connected to the Defendant's challenged conduct and is "likely to be redressed by a favorable decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). They allege "an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Spokeo*, 578 U.S. at 339 (internal quotation marks omitted). As the Supreme Court has explained: "[w]hen the suit is one challenging the legality of government action or inaction . . . [and] the plaintiff is himself an object of the action (or forgone action) at issue . . . there is ordinarily little question that

the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it." 504 U.S. at 561-62.

Here, the "government action" is CHP's participation in enforcing California's cannabis licensing provisions on Plaintiff Swearinger's trust allotment. PL 280 does not confer jurisdiction to enforce California's regulatory cannabis laws against Indians in Indian country.

To obtain injunctive relief, a plaintiff must show a "certainly impending" future injury or a "substantial risk" that harm will recur. *In re Zappos.com, Inc*., 888 F.3d 1020, 1024 (9th Cir. 2018) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). The Ninth Circuit has made clear that this is satisfied where the challenged harm "is part of a pattern of officially sanctioned behavior that violates federal rights." *Perdomo v. Noem*, 148 F.4th 656, 662 (9th Cir. 2025) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 998 (9th Cir. 2012)) (cleaned up).

Plaintiffs allege warrantless searches, seizures, and destruction of property on tribal trust lands during coordinated raids in July 2024, in which CHP officers participated alongside county sheriffs, based solely on the absence of state or county cannabis licenses. FAC ¶¶ 1, 37-57, 63-65, 70, 73-74, 76, Exs. A, G, H. These raids were not isolated events: they were carried out under a policy adopted in 2020, publicly reaffirmed in 2022, and confirmed by Sheriff Kendall as part of an going enforcement campaign. FAC ¶ 65, Ex. H (Doc 35 at 112). CHP's membership in the Unified Cannabis Enforcement Taskforce (UCETF), in which its mission of "cannabis enforcement coordination" with Humboldt and Mendocino Counties to raid "illegal cannabis operators" underscores its institutional role in this coordinated campaign.[2]

Defendant's assertion that Plaintiffs "allege no specific act" by the CHP Commissioner overlooks both the official-capacity nature of the claim and the well-pleaded facts tying CHP's participation in the July 2024 raids to agency policy and supervision. *See* MTD at 16. As the head of the CHP, Duryee sets the agency's policies, training requirements, and operational directives, and CHP officers' participation in the July 2024 raids on tribal trust land is directly traceable to that authority. *See, e.g., OSU Student Alliance v. Ray*, 699 F.3d 1053, 1069-70 (9th Cir. 2012) (injunctive relief may run against supervisory officials with authority to implement policy).

[2] *See* https://cannabis.ca.gov/about-us/about-dcc/unified-cannabis-enforcement-taskforce-ucetf/.

Plaintiffs allege that CHP officers were physically present and operationally engaged during the raids on Eunice Swearinger's property, including escorting the transportation of tractors onto the property—where crops had been destroyed the previous day—to destroy additional crops. FAC ¶¶ 48–50. Public statements confirm that these raids were part of a continuing enforcement campaign applying state cannabis laws to Reservation properties. FAC ¶ 65, Ex. H. These allegations, taken as true, establish that the harms Plaintiffs suffered are fairly traceable to Duryee's policies, supervision, and approval of CHP's coordinated enforcement actions.

Duryee's liability is not limited to his supervisory role; his deliberate indifference and reckless disregard for Plaintiffs' rights are evident from CHP's acknowledged awareness of PL 280's limits. CHP officers receive California Commission on Peace Officer Standards and Training (POST) training on "Public Law 280: Policing Indian Lands," developed in consultation with the Attorney General's PL 280 Advisory Council, which includes state and tribal law enforcement representatives. *See* Cal. POST, August 2025 Report;[3] Cal. DOJ, PL 280 Advisory Council.[4] These trainings and advisory discussions specifically address the jurisdictional boundaries between criminal/prohibitory and civil/regulatory laws in Indian country with "renowned and nationally respected Public Law 280 experts Professor Carole Goldberg from the University of California at Los Angeles, School of Law, and Dorothy Alther, Legal Director of California Indian Legal Services." *Id*. Despite this knowledge, CHP officers participated in raids enforcing California's cannabis licensing regime—a civil/regulatory scheme—on tribal trust lands. Duryee's approval of CHP's continued participation in such operations, despite clear training and advisory guidance, demonstrates deliberate indifference and reckless disregard for the constitutional and sovereignty rights of Plaintiffs.

The redressability requirement for standing is satisfied as well. An injunction prohibiting CHP from participating in the enforcement of state or county cannabis regulatory laws in Indian country absent federal authority, coupled with training and supervisory directives to ensure compliance, would directly reduce the risk of future warrantless searches, seizures, and destruction

[3] https://post.ca.gov/August-2025-Report ("New Training Project Underway: *Public Law 280: Policing Indian Lands"*).
[4] https://oag.ca.gov/nativeamerican/pl280-advisory-council.

of property. *See Valley Forge Christian College v. Americans United for Separation of Church & State,* 454 U.S. 464, 472 (1982); *Lujan,* 504 U.S. at 560-61. Where, as here, the Plaintiffs are the direct objects of the challenged government action, there is ordinarily little question that a favorable ruling will redress the injury.

Defendant's reliance on *City of Los Angeles v. Lyons,* 461 U.S. 95, 102 (1983) is misplaced. Lyons could not show a policy authorizing the challenged conduct or a realistic likelihood of recurrence absent speculative future encounters. Here, by contrast, Plaintiffs allege public confirmation of an ongoing campaign to enforce state cannabis laws against Reservation properties; multiple coordinated raids over two days in 2024 with CHP participation, carried out solely because the operations lacked state or county licenses—a condition that will persist for all tribal members operating under the Tribe's ordinance; and circumstances in which no unlawful provocation is required for renewed harm, as they are targeted precisely for engaging in Tribe-authorized activities over which the State lacks jurisdiction. *See LaDuke v. Nelson*, 762 F.2d 1318, 1324-26 (9th Cir. 1985); *Thomas v. City of Los Angeles*, 978 F.2d 504, 508 (9th Cir. 1992). These facts establish the kind of "standard pattern of officially sanctioned behavior" likely to recur recognized in *LaDuke* and the "credible threat" of future harm recognized in *Kolender v. Lawson*, 461 U.S. 352, 357 n.3 (1983).

The claims are also ripe. The challenged conduct has already occurred and is alleged to be ongoing; withholding review would expose Plaintiffs to further unlawful raids, destruction of property, and violations of tribal sovereignty. This is a concrete enforcement dispute, not an abstract legal disagreement. Enforcing state and county regulatory laws on the Reservation invades tribal sovereignty and the Tribe's inherent right to self-government—an injury courts recognize as irreparable. *See Ute Indian Tribe of Uintah & Ouray Reservation v. Utah*, 790 F.3d 1000, 1005 (10th Cir. 2015) (Gorsuch, J.); *Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1255-56 (10th Cir. 2006); *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001).

This ongoing enforcement also fails *Bracker* balancing, which independently bars state intrusion where federal and tribal interests—here, under the CSA—outweigh any asserted state

interest. *Bracker*, 448 U.S. at 145-48. Defendant sidesteps this analysis and disregards the paramount federal and tribal interests in the Tribe's self-governance and self-determination.

Because Plaintiffs plausibly allege a credible threat of future injury stemming from an ongoing policy and practice of unlawful enforcement applied to Reservation properties, in which the CHP has participated, and because the injuries are concrete, traceable to the Defendant, and redressable by injunctive relief, the motion to dismiss for lack of standing and ripeness should be denied.

II. PLAINTIFFS STATE A VALID CLAIM AGAINST DURYEE

Defendant's Rule 12(b)(6) argument misstates both the factual allegations in the FAC and the applicable legal standards. The FAC alleges more than a "vague assertion" of CHP presence. *See* MTD at 17. It pleads specific facts showing: (1) CHP officers' operational participation in the July 23, 2024 enforcement action on the Reservation; (2) Duryee's statutory and operational authority over CHP enforcement activities, including interagency coordination with county law enforcement; and (3) an ongoing, declared policy of enforcing state cannabis laws against tribal members on tribal lands, which will inevitably recur absent injunctive relief.

Because California generally permits cannabis activity through licensure, its scheme is civil/regulatory under *Cabazon*. CHP's enforcement of that regime on tribal trust land falls outside PL 280's jurisdiction.

A. CHP's Direct Participation Plausibly Alleged

The FAC alleges that multiple CHP vehicles and officers were present during the July 23, 2024 raids, accompanying Mendocino County deputies and contractors who destroyed Plaintiffs' crops. FAC ¶¶ 48–50. CHP's role was not incidental: their presence on Plaintiff Swearinger's property during the execution of search warrants on her tribal allotment supports a reasonable inference of operational participation. Even if CHP's role were limited to escorting the tractors and securing the scene, they unquestioningly participated in executing the search warrant on the property and destroying Plaintiff Swearinger's property. *See Boyd v. Benton County*, 374 F.3d 773, 780 (9th Cir. 2004) (holding officers who provided armed backup and participated in the search operation were "integral participants" in the search). Thus, Plaintiffs are not required to plead "that

each officer's actions themselves rise to the level of a constitutional violation." *Id*. Any "fundamental involvement in the conduct that allegedly caused the violation" is sufficient to make an officer an integral participant under clearly established law. *Blankenhorn v. City of Orange*, 485 F.3d 463, 481 n.12 (9th Cir. 2007); *Chuman v. Wright*, 76 F.3d 292, 294-95 (9th Cir. 1996).

Contrary to Duryee's assertions, *Cabazon* makes clear that the State cannot recharacterize a civil/regulatory licensing regime as criminal/prohibitory merely by enforcing it through a criminal process. *Cabazon,* 480 U.S. at 211.

At the pleading stage, Plaintiffs are entitled to all reasonable inferences from the facts alleged. *OSU Student Alliance*, 699 F.3d at 1076-77 (allegations of supervisory knowledge and acquiescence suffice; direct order not required). Sheriff Kendall has publicly stated that he coordinated with a "task force" in conducting cannabis raids—further supporting the inference that CHP's presence was part of coordinated, multi-agency enforcement activity, not happenstance. FAC ¶ 65, Ex. H.

B. Official Capacity Claim Satisfies *Ex parte Young*

Defendants' reliance on *Iqbal* is misplaced in the context of official-capacity claims for prospective relief. *See* MTD 16-17. Under *Ex parte Young*, a plaintiff need only allege an ongoing violation of federal law and a "fairly direct" connection between the official's duties and the challenged conduct. *Los Angeles Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992).

As CHP Commissioner, Duryee has ultimate authority over CHP enforcement priorities, officer training, and interagency operations. FAC ¶ 74. That authority is more than sufficient to establish the requisite connection. *See Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501-02 (9th Cir. 1996) (CHP Commissioner proper defendant for injunctive relief to change CHP enforcement practices despite small number of citations). The FAC alleges an ongoing, declared campaign to enforce state cannabis laws on tribal lands without federal authorization, and that CHP has participated in such enforcement—adequately pleading both the ongoing violation and the nexus to Duryee's official duties.

C. Individual Capacity and Policy Based Theories are Plausibly Pled

Defendant's *Monell v. Department of Social Services*, 436 U.S. 658 (1978) argument is

inapposite. MTD at 18. *Monell* applies to municipalities, not state officials sued in their official capacity for prospective relief. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 n.10 (1989); *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985). To the extent Defendants invoke *Iqbal* to defeat any individual-capacity theory, the Ninth Circuit squarely permits supervisory liability where a supervisor, through his own actions, is deliberately indifferent to known constitutional violations or sets in motion acts he knows or should know will cause constitutional injury. *Starr,* 652 F.3d at 1207-08, 1216-17. The FAC alleges Defendant's responsibility for CHP policy, training, and supervision and a failure to train officers regarding the limits of state authority in Indian country, amounting to deliberate indifference. FAC ¶¶ 74-75. That deliberate indifference is underscored by CHP's acknowledged awareness of PL 280's limits. As discussed *supra*, CHP officers receive POST training on PL 280 and the distinction between criminal/prohibitory and civil/regulatory laws in Indian country. Despite this knowledge, CHP officers helped sheriffs enforce civil/regulatory laws on tribal trust lands. Duryee's approval of CHP's continued participation in such operations, despite clear training and advisory guidance, demonstrates reckless disregard for Plaintiffs' federal rights.

Moreover, the FAC alleges a CHP practice—participation in cannabis enforcement raids on tribal lands—that is traceable to Duryee's leadership and control. The Sheriff's own public statements about meeting and working with a "task force" in conducting such raids further support the plausibility of a coordinated enforcement policy involving CHP, particularly with its membership in UCETF and its enforcement of California cannabis laws.

Ordering, authorizing, or knowingly acquiescing in unconstitutional raids constitutes direct participation under Ninth Circuit law. *Starr*, 652 F.3d at 1207.

D. The Pleading Standard Is Satisfied

At the Rule 12(b)(6) stage, Plaintiffs need only allege facts that, accepted as true, state a claim that is plausible on its face. *See Twombly*, 550 U.S. at 570. The FAC does so by alleging CHP's physical presence and operational role in the July 2024 raids (FAC ¶¶ 48-50); Defendant's statutory and operational authority over CHP enforcement actions (FAC ¶ 74); and an ongoing, declared policy of enforcing state cannabis laws on tribal lands (FAC ¶¶ 76-78, 81). These

allegations, taken together, "nudge" Plaintiffs' claims "across the line from conceivable to plausible." *Id.*; *Keates v. Koile*, 883 F.3d 1228, 1240-41 (9th Cir. 2018) (on a motion to dismiss, court accepts nonconclusory factual allegations and reasonable inferences in plaintiffs' favor).

Defendant's insistence on evidentiary detail at the pleading stage misstates the standard and ignores controlling Ninth Circuit precedent. The Court should deny Duryee's motion to dismiss the claims against him. Plaintiffs have plausibly alleged both individual and official capacity claims, supported by specific factual allegations and a clear legal theory under *Ex parte Young*.

III. DEFENDANT DURYEE IS NOT IMMUNE UNDER THE ELEVENTH AMENDMENT BECAUSE THE FAC SATISFIES RULE 8 AND THE *EX PARTE YOUNG* EXCEPTION APPLIES

A. The FAC Meets Rule 8's Pleading Standard as to Defendant, Duryee

Defendant's Rule 8 argument ignores the actual allegations in the FAC and misstates the applicable standard. MTD at 18-19. Rule 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," not detailed evidentiary matter. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511-12 (2002) (citation omitted). At the pleading stage, the Court accepts all well-pled facts as true and draws all reasonable inferences in Plaintiffs' favor. *Keates*, 883 F.3d at 1240-41. It does not require detailed factual allegations but only enough factual content to allow the court to draw a reasonable inference of liability. *Iqbal*, 556 U.S. at 678 (quotation marks omitted) (quoting *Twombly*, 550 U.S. at 555).

The FAC easily meets this standard. The FAC alleges that: CHP officers and vehicles were physically present on Plaintiff Swearinger's tribal trust property during the July 23, 2024 raid; CHP personnel escorted tractors and secured the scene while crops were destroyed; CHP acted in coordination with county deputies and other "task force" officers; and Duryee, as CHP's chief executive, sets enforcement priorities, training, and interagency operations, including the challenged enforcement campaign on tribal lands. FAC ¶¶ 48-50.

Viewed through the PL-280 and *Cabazon* lens, including federal preemption, CHP had no authority to execute search warrants on Plaintiff Swearinger's property based on violations of California's cannabis and environmental laws, which are civil/regulatory. FAC ¶¶ 5, 31-36, 60, 62-65, 70, 76, Exs. A, G, H. CHP's participation in enforcing them on tribal trust land exceeded the

jurisdictional limits of PL 280. The enforcement method does not change the underlying classification; *Cabazon* rejects that form-over-substance approach. *Cabazon*, 480 U.S. at 211.

These allegations are neither conclusory nor speculative. They identify the responsible party, describe his connection to the challenged conduct, and provide fair notice of the claims. That is all Rule 8 requires. *See Pickern v. Pier 1 Imports (U.S.), Inc.,* 457 F.3d 963, 968 (9th Cir. 2006) ("The complaint need only give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.") (quoting *Swierkiewicz*, 534 U.S. at 512). Duryee has fair notice of the claims against him and the factual basis for those claims. Nothing more is needed to survive a 12(b)(6) motion, particularly where Defendant makes no effort to oppose these allegations or the aspects of the claims for relief that arise from such allegations.

Even if PL 280 applied, the *Bracker* balance would still preclude state enforcement given the weight of federal and tribal interests. *See Bracker*, 448 U.S. at 145-48.

B. Eleventh Amendment Immunity Does Not Bar This Suit Because *Ex parte Young* Applies

Defendant's reliance on *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984) and *Seminole Tribe of Fl. v. Florida*, 517 U.S. 44 (1996) is misplaced. MTD at 19-20. Plaintiffs do not seek retroactive monetary relief from the State; they seek prospective injunctive and declaratory relief to halt an ongoing violation of federal law—the enforcement of state civil/regulatory cannabis laws on tribal lands without federal authorization.

As noted earlier, California's cannabis laws are a licensing framework, not a prohibition—making them regulatory under *Cabazon* and beyond PL 280's scope. That is the precise circumstance in which *Ex parte Young* permits suit against a state officer in his official capacity. *Rounds v. Or. State Bd. of Higher Ed*., 166 F.3d 1032, 1036 (9th Cir. 1999) ("a narrow exception to Eleventh Amendment immunity for certain suits seeking declaratory and injunctive relief against unconstitutional actions taken by state officers in their official capacities.").

C. Defendant Has a "Fairly Direct" Connection to the Enforcement at Issue

The Eleventh Amendment does not bar actions for prospective declaratory or injunctive relief against state officers in their official capacities for alleged violations of federal law. *Ex parte Young*, 209 U.S. at 155-56; *Alden v. Maine*, 527 U.S. 706, 747 (1999). The state official sued "must

have some connection with the enforcement of the act." *Id*. at 157. That connection "must be fairly direct; 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." *Eu*, 979 F.2d at 704; *see Coal. to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1134-35 (9th Cir. 2012).

In *Coalition*, the Ninth Circuit rejected an Eleventh Amendment defense where the University of California's president argued he merely "implemented" a constitutional provision but did not "enforce" it. The court held that, as the head of the university, he had a "fairly direct" and "specific connection" to enforcement because he was duty-bound to ensure compliance and had authority over those carrying it out. *Id*. at 1135; *see also Eu*, 979 F.2d at 704; *Easyriders Freedom F.I.G.H.T.*, 92 F.3d at 1501-02. That role went beyond "living with" the law—he enforced it.

So too here. The FAC alleges far more than "general supervisory authority." CHP officers, under Duryee's command, directly participated in the July 2024 raid on Plaintiff Swearinger's trust property—conduct that, even if limited to securing the scene and escorting equipment, was integral to the search and destruction of her cultivation. FAC ¶¶ 48–50; *Boyd*, 374 F.3d at 780. CHP's participation with the task force was not an isolated incident but part of an ongoing, coordinated enforcement campaign, and as head of CHP, Defendant has the authority to direct, continue, or halt CHP's participation in such operations. FAC ¶¶ 65, Ex. H, 74. Ninth Circuit precedent treats knowing acquiescence in such operations as direct participation. *Starr*, 652 F.3d at 1207.

Like the university president in *Coalition*, "the buck stops" with Duryee for CHP's enforcement activities. Duryee's suggestion that there is no "real threat" of enforcement is belied by the FAC's allegations of a declared, ongoing campaign targeting tribal lands. CHP's past participation in such raids, coupled with Defendant's authority to continue them, satisfies the Ninth Circuit's requirement of a "real likelihood" of future enforcement. *Snoeck v. Brussa*, 153 F.3d 984, 987 (9th Cir. 1998).

Because the FAC alleges specific facts showing Duryee's direct connection to, and authority over, the challenged enforcement, and because Plaintiffs seek only prospective relief to halt an ongoing violation of federal law, the *Ex parte Young* exception squarely applies. Rule 8 is satisfied, Eleventh Amendment immunity does not bar this suit, and the motion to dismiss should be denied.

IV. PLAINTIFFS DO NOT SEEK BARRED MONETARY DAMAGES AGAINST COMMISSIONER DURYEE IN HIS OFFICIAL CAPACITY

Defendants' Eleventh Amendment argument mischaracterizes the relief sought. Plaintiffs do not seek retrospective monetary damages from Duryee in his official capacity. The gravamen of the claims against him is for prospective declaratory and injunctive relief to halt an ongoing violation of federal law—the enforcement of state cannabis laws on tribal lands without federal authorization. Such relief falls squarely within the *Ex parte Young* exception to Eleventh Amendment immunity. *Doe v. Lawrence Livermore Nat. Laboratory*, 131 F.3d 836 (9th Cir. 1997) (en banc) (citing *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989)).

To the extent the FAC could be construed as seeking damages from Defendant in his official capacity, Plaintiffs clarify that no such relief is sought. Official-capacity damages claims are treated as suits against the State itself and are barred by the Eleventh Amendment. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989); *Edelman v. Jordan*, 415 U.S. 651, 663 (1974). Plaintiffs' claims for relief against Commissioner Duryee are limited to prospective remedies designed to prevent future constitutional violations.

Nor does this case present the circumstances in *Green v. Mansour*, 474 U.S. 64 (1985), where the Court held that *Ex parte Young* does not authorize purely retrospective relief. Here, the FAC alleges an ongoing enforcement campaign in which CHP has participated and which Duryee has the authority to continue or halt. FAC ¶¶ 48–50, 63–65, 74, 76–78, 81. The relief sought—an injunction prohibiting CHP from participating in such enforcement absent federal authority, and a declaration of the limits of state jurisdiction—is forward-looking and aimed at preventing future harm.

Because Plaintiffs seek only prospective relief against Duryee in his official capacity, the Eleventh Amendment does not bar these claims. The motion to dismiss on this ground should be denied.

V. DEFENDANT DURYEE IS A PROPER DEFENDANT AS TO PLAINTIFFS' THIRD AND SEVENTH CLAIMS

A. "Tribal sovereignty is not absolute" Cuts the Other Way Here

Defendants invoke the truism that tribal sovereignty must yield to "valid federal statutes,"

but that principle only underscores why their argument fails. *See* MTD at 23. The preemption analysis in *Cabazon* begins with the premise that federal law—not state law—governs in Indian country unless Congress has *expressly authorized* state jurisdiction.

In the field of drug regulation, Congress has occupied the field through the Controlled Substances Act (CSA), a comprehensive federal scheme governing controlled substances that pose a risk of abuse and dependence. Marijuana remains a Schedule I controlled substance under federal law, notwithstanding California's—and other states'—legalization of its medicinal or recreational cultivation and use. *See, e.g.*, *Gonzales v. Raich*, 545 U.S. 1, 29 (2004) (holding that Congress, acting under the Commerce Clause, may prohibit even purely intrastate cultivation and possession of marijuana as part of a comprehensive federal scheme that preempts conflicting state laws). PL 280 is a limited grant of state jurisdiction in Indian country; it is not a federal drug law and does not displace or diminish the CSA's preemptive force. *Id*.; *see Cabazon*, 480 U.S. at 220-21 (State's asserted interest in preventing infiltration of organized crime "is irrelevant and the state and county laws are pre-empted").

Under *Cabazon*, a law is criminal/prohibitory if its intent is "generally to prohibit certain conduct," and civil/regulatory if it "generally permits the conduct at issue, subject to regulation." *Cabazon*, 480 U.S. at 209. California's cannabis framework is the inverse of a prohibitory scheme: licensure is the rule and prohibition the exception under the Medicinal and Adult-Use Cannabis Regulation and Safety Act, which authorizes commercial cultivation, possession, distribution, and retail sales through year-round licensure, with taxation and regulatory oversight. *See* Cal. Bus. & Prof. Code § 26000 et seq.; Cal. Health & Saf. Code § 11362.1; 480 U.S. at 209. The State cannot convert a licensing scheme into a prohibition by enforcing it through raids and warrants. *Cabazon*, 480 U.S. at 211.

Even if PL 280 could make California's cannabis laws "applicable" in Indian country, enforcement would still be foreclosed where Congress has vested exclusive enforcement authority in the federal government. *See Sycuan Band of Mission Indians v. Roache*, 54 F.3d 535, 539-41 (9th Cir. 1995) (holding that PL 280 does not confer jurisdiction over civil/regulatory matters, and that where Congress has granted the United States exclusive

jurisdiction to enforce state law in Indian country, any conflicting PL 280 provision is impliedly repealed). The CSA, like IGRA in *Sycuan*, is a comprehensive federal regime that leaves no room for state enforcement in Indian country absent express congressional authorization.

Finally, even if PL 280 applied and the CSA did not foreclose enforcement, the *Bracker* balancing test would still bar state action. *Bracker*, 448 U.S. at 145-48. Here, the federal and tribal interests in regulating cannabis activity on tribal lands are paramount and outweigh any residual state interest, particularly where state enforcement would undermine federal policy and tribal self-government.

B. Defendants' "public policy" Framing Misapplies *Cabazon*

Defendants' application of the "public policy" test is lifted out of context. MTD at 23. *Cabazon* does not ask whether the State has an important policy interest in the subject matter—every regulatory scheme can be justified in those terms. The test is whether the State's policy is to *generally prohibit* the conduct, or to *permit it subject to regulation*. *Cabazon*, 480 U.S. at 209. California's cannabis laws fall squarely in the latter category: the State affirmatively authorizes cultivation, manufacturing, distribution, and retail sales through licensure, taxation, and oversight. The fact that the State can articulate health, safety, or welfare rationales for its regulations does not transform them into criminal prohibitions; it simply explains why the State regulates a permitted market created through the voter initiative process.

The structure of the law controls: here, licensure predominates, marking it as regulatory under *Cabazon*. Defendants' reliance on *Quechan Tribe v. McMullen,* 984 F.2d 304 (9th Cir. 1993) is misplaced. *Quechan* applied *Cabazon* to a fireworks statute whose structure and purpose were to *ban* Class C fireworks outright, with only a narrow "safe and sane" exception available for eight days a year. *Id*. at 306-08. That was a prohibition with rare exceptions—the inverse of California's cannabis framework, where licensure is the norm and prohibition the exception. *Id*. *Quechan* actually reinforces Plaintiffs' position: it looked past the existence of limited permits to the statute's overall purpose and found it prohibitory because permission was the exception. *Id*. Here, permission is the rule.

Defendant points to testing requirements, pesticide limits, seed-to-sale tracking, and age

restrictions as evidence of a "strong public policy interest" in enforcement. MTD at 23-24. But if that were enough to make a law criminal/prohibitory, every licensed and regulated industry—from alcohol to gaming to restaurants—would fall within PL 280, erasing the *Cabazon* distinction altogether. Defendant's examples are simply elements of a regulatory regime: they are conditions placed on lawful participation in a licensed market. In *Cabazon*, the State's gambling laws likewise contained numerous operational restrictions and safeguards, yet the Court held they were regulatory because the State's policy was to permit the activity under those conditions. *Cabazon,* 480 U.S. at 210-12.

The same is true here: California's cannabis laws are designed to manage a lawful industry, not to ban it. And even though the State enforces cannabis laws through criminal means, such enforcement does not convert it into a criminal law under PL-280. *Id*. at 211.

C. PL 280 Does Not Authorize Enforcing Civil/Regulatory Schemes in Indian Country

Even though PL 280 grants California criminal jurisdiction in Indian country, it does not extend to civil/regulatory laws. *Id*. at 207-12; *Bryan v. Itasca County*, 426 U.S. 373, 388-90 (1976). The cannabis provisions Duryee seeks to enforce—predicated on the absence of a state or county license—are regulatory in nature. Licensure is the rule, while prohibition is the exception.

Using a search warrant as the enforcement vehicle does not change the character of the underlying law. Nor can the State convert a regulatory scheme into a prohibitory one by enforcing it through the criminal process. *Id*. at 211. PL 280 does not permit the State to export its licensing regime onto tribal trust land.

Defendant's retrocession argument misstates the structure of PL 280 and turns the foundational presumption of tribal sovereignty upside down. *See* MTD at 24 (Tribe hasn't retroceded under § 1323; California retains concurrent jurisdiction). The default rule is that tribes and the federal government have exclusive jurisdiction in Indian country unless Congress expressly provides otherwise. *Williams v. Lee*, 358 U.S. 217, 219-20 (1959). PL 280 is such an exception, but it is narrowly construed "in light of traditional notions of Indian sovereignty and the congressional goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development." *Cabazon*, 480 U.S. at 216. It extends only to criminal/prohibitory

laws; it does not authorize "full concurrent jurisdiction to investigate and prosecute violations" of California's regulatory cannabis laws. MTD at 24.

If a law is outside PL 280's scope, there is nothing to "retrocede" under 25 U.S.C. § 1323. Retrocession returns jurisdiction the State actually possesses; it is not a precondition to tribal autonomy and cannot expand state power where *Cabazon* and *Bryan* place the law outside PL 280.

Defendant's own arguments confirm that California's cannabis laws are civil/regulatory under *Cabazon*. Their invocation of "public policy" and health-and-welfare goals describes regulation of a permitted market, not prohibition of an inherently criminal act. *Quechan* supports, rather than undermines, Plaintiffs' position. *See* MTD at 23. And the sovereignty principle they cite only reinforces that, absent a valid federal statute authorizing it, state law cannot displace tribal self-government in Indian country.

PL 280 provides no such authority here, and the motion to dismiss should be denied.

VI. SECTION 1983 PERSONAL CAPACITY CLAIMS STAND ON THEIR OWN

Defendants' assertion that the personal-capacity allegations "add nothing" to the official-capacity claims and suffer "the same fatal jurisdictional defects" misstates both the law and the FAC. MTD at 24. Personal-capacity claims are not redundant where, as here, Plaintiffs allege that Duryee's own actions and omissions—undertaken under color of state law—caused the constitutional violations at issue. *Hafer v. Melo*, 502 U.S. 21, 25-27 (1991) (state officials may be held personally liable under § 1983 for actions taken in their individual capacities, even when those actions are part of official duties). Directing or tolerating unconstitutional raids is actionable supervisory conduct. *Starr*, 652 F.3d at 1207.

Because Plaintiffs allege specific facts showing Duryee's personal role in setting in motion and maintaining the enforcement actions that caused their injuries, and because both damages and injunctive relief are available to remedy those injuries, the personal-capacity claims are neither jurisdictionally defective nor redundant. The motion to dismiss them should be denied.

A. Plaintiffs Allege a Concrete and Particularized Injury Traceable to Commissioner Duryee's Conduct

Commissioner Duryee's deliberate indifference is underscored by CHP's own POST training on "Public Law 280: Policing Indian Lands," developed with the Attorney General's

PL-280 Advisory Council and nationally recognized experts. These trainings specifically delineate the criminal/prohibitory versus civil/regulatory divide. Despite this knowledge, Duryee approved CHP's participation in raids enforcing California's cannabis licensing regime—a civil/regulatory scheme—on tribal trust lands. His decision to tolerate and perpetuate such operations, in the face of clear training and advisory guidance, demonstrates the deliberate indifference and reckless disregard that satisfy the mental-state element for supervisory liability under § 1983.

The FAC alleges that Duryee personally exercised supervisory authority to set CHP enforcement priorities, approve participation in the July 2024 raids on tribal trust lands, and maintain policies and training that authorize or permit warrantless searches, seizures, and destruction of property in Indian country absent federal authority. FAC ¶¶ 6, 74-78, 81, 86, 92, 98-99. CHP officers, acting under his command, were physically present and operationally engaged in the July 23, 2024 raid on Plaintiff Swearinger's trust property, escorting tractors and securing the scene while crops and equipment were destroyed. FAC ¶¶ 48-50.

California's cannabis laws function primarily through licensing rather than outright bans, placing them on the regulatory side of *Cabazon's* criminal/regulatory divide. By enforcing those provisions on tribal trust land, even under the auspices of warrants or criminal investigations, CHP acted beyond the authority PL 280 confers. *Cabazon*, 480 U.S. at 211.

These allegations describe concrete, particularized harm—the warrantless entry, seizure, and destruction of property—that is fairly traceable to Duryee's own decisions and omissions. Plaintiffs allege that, as CHP Commissioner, Duryee knew CHP officers were participating in the July 2024 raids on tribal trust lands under a policy applying state cannabis laws in Indian country, and that he knowingly disregarded or acquiesced in and failed to stop that conduct. At the pleading stage, such allegations of supervisory knowledge and acquiescence in subordinates' unconstitutional acts suffice where, as here, the underlying Fourth and Fourteenth Amendment claims do not require proof of a specific intent to violate rights, but may be established by deliberate indifference to known violations. *Iqbal* does not impose a blanket rule barring such claims; rather, as *OSU Student Alliance,* 699 F.3d at 1071-72, explains, the requisite mental state for supervisory liability turns on the constitutional provision at issue. In *Iqbal*, specific intent was required for

invidious discrimination claims, so knowing acquiescence was insufficient. By contrast, Fourth Amendment unlawful search and seizure claims and related Fourteenth Amendment due process claims may be predicated on deliberate indifference—where a supervisor knows of and fails to act to prevent ongoing violations. Here, the FAC plausibly alleges that Duryee's own conduct, including his knowing disregard and acquiescence, "set in motion" the acts causing the constitutional injury, satisfying both Article III's causation requirement and the mental-state element for supervisory liability under § 1983. FAC ¶¶ 6, 74-78, 81, 86, 92, 98-99.

Even if Duryee were to invoke qualified immunity, that defense fails at this stage because the rights at issue were clearly established well before July 2024. It has long been settled that the Fourth Amendment prohibits warrantless entries into homes and seizures of property absent exigent circumstances or valid consent. *Payton v. New York*, 445 U.S. 573, 586-90 (1980); *Soldal v. Cook County*, 506 U.S. 56, 61-62 (1992). That protection extends to dwellings and property on tribal lands, where state officers lack authority to enforce state law absent express congressional authorization. *See Cabazon*, 480 U.S. at 207-12; *Cohen's Handbook of Federal Indian Law* § 6.043][c] (Nell Jessup Newton ed., 2012). By 2024, no reasonable official could believe it lawful to order or acquiesce in warrantless raids on tribal trust property to enforce state cannabis laws. The FAC alleges that Duryee knew of and acquiesced in such conduct, thereby "set[ting] in motion" the constitutional violations. Because the unlawfulness of the conduct was clearly established, and because the allegations plausibly show Duryee's personal involvement under the applicable mental-state standard, qualified immunity cannot bar these claims at the pleading stage.

Under Ninth Circuit precedent, a supervisor who directs, sanctions, or deliberately turns a blind eye to unconstitutional raids is deemed a direct participant for purposes of § 1983 liability. *Starr*, 652 F.3d at 1207.

The FAC alleges that Duryee knew of and acquiesced in such conduct, thereby "set[ting] in motion" the constitutional violations. Because the unlawfulness of the conduct was clearly established, and because the allegations plausibly show Duryee's personal involvement under the applicable mental state standard, qualified immunity cannot bar these claims at the pleading stage.

B. The Court Can Grant Effective Relief Against Duryee in His Personal Capacity

Defendant's claim that no effective remedy is available ignores the remedies § 1983 provides. In a personal-capacity suit, a state official may be held liable for damages for past constitutional violations and may also be subject to injunctive relief to prevent future harm. *Hafer*, 502 U.S. at 30-31. Here, an injunction prohibiting Duryee from authorizing or directing CHP participation in the enforcement of state or county cannabis laws on tribal lands absent federal authority, coupled with damages for past violations, would directly redress Plaintiffs' injuries. Such relief would operate against Duryee personally to restrain his future conduct, not the State's treasury, and is therefore permissible in a personal-capacity action. *Id*.

C. Personal-Capacity Claims Are Properly Pled in the Alternative

The Federal Rules expressly permit pleading in the alternative. Fed. R. Civ. P. 8(d)(2)-(3). That Plaintiffs also sue Duryee in his official capacity does not bar a parallel personal-capacity claim, particularly where the FAC alleges his personal involvement in the challenged conduct. *Graham*, 473 U.S. at 165-67. Whether the evidence ultimately supports both theories is a question for later stages, not a basis for dismissal at the pleading stage.

D. Standing and Case-or-Controversy Requirements Are Met

As set out above, Plaintiffs have standing: they suffered concrete injuries, fairly traceable to Duryee's conduct, and those injuries are redressable by the relief sought. The same facts that establish standing for the official-capacity claims establish it for the personal-capacity claims. The existence of an ongoing enforcement campaign, CHP's documented participation, and Duryee's authority to continue or halt that participation create a live case or controversy. *See Lyons*, 461 U.S. at 102; *LaDuke*, 762 F.2d at 1324-26.

Because Plaintiffs allege specific facts showing Commissioner Duryee's personal role in setting in motion and maintaining the enforcement actions that caused their injuries, and because both damages and injunctive relief are available to remedy those injuries, the personal-capacity claims are neither jurisdictionally defective nor redundant. The motion to dismiss them should be denied.

CONCLUSION

For the foregoing reasons, the Court should deny the Defendant's motion to dismiss in its entirety. In the alternative, Plaintiffs seek leave to amend their complaint.

DATED: September 23, 2025

Respectfully submitted,

DEHNERT LAW, PC

By: /s/ David B. Dehnert

David B. Dehnert (CA Bar No. 214243)
Dehnert Law, PC
475 Washington Blvd.
Marina Del Rey, CA 90292

LAW OFFICE OF LESTER J. MARSTON

By: */s/ Lester J. Marston*

Lester J. Marston (CA Bar No. 081030)
Law Office of Lester J. Marston
405 West Perkins Street
Ukiah, CA 95482

Attorneys for Plaintiffs April James, Eunice Swearinger, Steve Britton and *Round Valley Indian Tribes*

CERTIFICATE OF SERVICE

I am employed in the County of Mendocino, State of California. I am over the age of 18 years and not a party to the within action; my business address is that of Rapport & Marston, 405 West Perkins Street, Ukiah, California 95482.

I hereby certify that I electronically filed with the Clerk of the United States District Court for the Northern District of California by using the CM/ECF system on September 23, 2025, which generated and transmitted a notice of electronic filing to CM/ECF registrants.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; executed on September 23, 2025, at Ukiah, California.

/s/ Ericka Duncan
Ericka Duncan