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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 REPLY BRIEF IN SUPPORT OF HIS MOTION TO DISMISS COMPLAINT

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

Date: October 14, 2025
Time: 11:00 a.m.
Judge: The Honorable Robert M. Illman
Courtroom: 1

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant Commissioner Sean Duryee ("Commissioner Duryee") of the California Highway Patrol ("CHP") respectfully submits the following reply brief in support of his Motion to Dismiss Plaintiff's First Amended Complaint ("FAC").

I. INTRODUCTION

Plaintiffs' Opposition to Commissioner Duryee's Motion to Dismiss Complaint ("Opposition" or "Opp.") does not overcome the fundamental defects in their claims against Commissioner Duryee. Specifically, Plaintiffs rely on conclusory allegations that unidentified CHP officers may have escorted sheriff's vehicles and excavators the day after the July 2024 search warrant execution by Mendocino and Humboldt Counties. Opp. at 2:17-24. They further cite to CHP's participation in the Unified Cannabis Enforcement Task Force ("UCETF") Opp at 7:17–20, without citing to any UCETF enforcement actions on tribal lands or allotments, as evidence of an ongoing policy to enforce cannabis laws on tribal lands. Even if true, these assertions do not establish Commissioner Duryee's personal involvement, any CHP policy of enforcing cannabis laws on tribal lands, or any credible threat of future CHP enforcement.

Moreover, Plaintiffs attempt to frame CHP training materials, which reflect CHP's responsibility to ensure that officers understand jurisdictional boundaries, as demonstrative of Commissioner Duryee's alleged deliberate indifference and reckless disregard for Plaintiffs' rights, fails. Opp at 8:8-20. To the contrary, such training demonstrates CHP's policy to instruct its officers to respect jurisdictional boundaries under Public Law 280 ("PL 280"). Similarly, CHP's participation in UCETF does not show, or in any way indicate, a targeted policy toward tribal lands, particularly where no UCETF enforcement action has ever occurred on a reservation or allotment. Further, Mendocino and Humboldt Counties, who undisputedly led the July 2024 search warrant's execution, are not members of UCETF[1]. Thus, Plaintiffs' reliance on these points underscores the speculative and legally insufficient nature of their claims.

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[1] See list of participating state agencies: Unified Cannabis Enforcement Taskforce (UCETF) - Department of Cannabis Control

Accordingly, the claims against Commissioner Duryee remain unsupported by facts and contrary to controlling law. Therefore, they must be dismissed under Rule 12(b)(1), Rule 12(b)(6), and the Eleventh Amendment.

II. PLAINTIFFS LACK STANDING AND THEIR CLAIMS ARE UNRIPE

Plaintiffs concede that CHP is not named in the search warrant and that CHP is not alleged to have led its execution. Instead, they rely on vague witness accounts that CHP "escorted" sheriff's vehicles and excavators. Opp. at 2:17-24; 3:1-4. Even if true, such allegations are insufficient to demonstrate standing. Article III standing requires a showing of injury that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

Where a plaintiff seeks injunctive relief, the threat must be "real and immediate," not based on past exposure or speculative fears. *City of Los Angeles v. Lyons*, 461 U.S. 95, 102–103 (1983). As the Court explained in *O'Shea v. Littleton,* "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief … if unaccompanied by any continuing, present adverse effects." *O'Shea v. Littleton*, 414 U.S. 488, 495–496 (1974).

Therefore, Plaintiffs identify no credible risk of CHP enforcement in the future. At most, they allege a one-time, peripheral presence *one day after* a dual county-led search. Such allegations do not create a live case or controversy against Commissioner Duryee. Thus, Plaintiffs' lack standing and have failed to demonstrate the Court has jurisdiction over this matter.

III. PLAINTIFFS FAIL TO STATE A CLAIM UNDER RULE 12(B)(6)

Even if jurisdiction existed, Plaintiffs' FAC fails to state a plausible claim against Commissioner Duryee. Liability under Section 1983 cannot rest on either supervisory status or vague speculation. "[E]ach Government official, his or her title notwithstanding, is only liable for his or her own misconduct." *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009).

Plaintiffs rely on CHP training concerning PL 280 to demonstrate Commissioner Duryee's alleged deliberate indifference and reckless disregard for Plaintiffs' rights. Opp at 8:8–22. But these materials show only that CHP trains officers to understand jurisdictional limits under PL 280. Fa

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from establishing a cannabis enforcement policy on tribal lands, this training demonstrates the opposite: that CHP instructs its officers to respect jurisdictional boundaries under PL 280.

Plaintiffs also point to CHP's participation in UCETF as evidence of an ongoing policy to enforce cannabis laws on tribal lands. Opp at 7:17–20. However, membership in an interagency task force does not establish an enforcement policy on tribal lands, particularly where Plaintiffs identify no instance of UCETF ever operating on tribal reservations or allotments. General participation in statewide coordination does not equate to an official policy directed at tribal lands.

Finally, witness accounts that CHP "escorted" sheriff vehicles the day after the July 2024 search do not establish a CHP enforcement policy or Commissioner Duryee's involvement. Opp. at 2:17-24; 10:20-23. Plaintiffs allege no sufficient facts connecting these observations to a CHP policy, directive, or practice attributable to Commissioner Duryee. Absent allegations of personal involvement, or a specific CHP policy, Plaintiffs' claims fail under Rule 12(b)(6). *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

IV. PLAINTIFFS' ELEVENTH AMENDMENT IMMUNITY ARGUMENT FAILS AND PROSPECTIVE RELIEF IS NOT ESTABLISHED

Plaintiffs concede that the Eleventh Amendment bars monetary damages against Commissioner Duryee in his official capacity, but they attempt to reframe their claims as falling within the *Ex parte Young* exception. Opp. at 16:3-15. This argument fails because the *Ex parte Young* exception does not apply to Commissioner Duryee.

First, *Ex parte Young*, 209 U.S. 123 (1908), applies only where there is an ongoing violation of federal law and a real and immediate threat of future enforcement. Plaintiffs point to no such threatened action by CHP. Plaintiffs' Opposition acknowledges that the July 2024 search warrant was part of *Sheriff Kendall's* "enforcement campaign" and was not a UCETF (or CHP) action, as the Mendocino County Sherriff's Department was not a member of UCETF. Opp. at 7:12-20. Plaintiffs' vague allegation that Sheriff Kendall was working with a "task force" in conducting the search warrants at issue, does not remotely establish CHP was a member of, or was in any way involved with, the "task force." Opp at 11:8-13. The only factual allegation as to

CHP is that witnesses allegedly saw CHP vehicles "escort" sheriff's deputies and excavators on the day following the service of the July 2024 search warrant. Opp. at 8:1-5. Tellingly, Plaintiffs cite no admissible evidence, nor are there allegations contained in the FAC, tying CHP to the warrant execution itself or participation in Sheriff Kendall's "task force." Such speculative assertions cannot establish an ongoing violation or a credible threat of future enforcement by CHP or Commissioner Duryee. See *Green v. Mansour*, 474 U.S. 64, 68 (1985) (no *Ex parte Young* exception where no ongoing violation). Because Plaintiffs identify no CHP policy or future action targeting their reservation, they fall outside this exception. Moreover, their reliance on CHP's general POST training under PL 280 and membership in UCETF is misplaced. Opp at 7:17–20; 8:8-20. Specifically, the existence of training materials does not equate to an imminent threat of enforcement, especially where the training materials demonstrate that CHP instructs its officers to respect jurisdictional boundaries under PL 280, and Plaintiffs do not allege that UCETF has ever acted on tribal land, including the execution of the July 2024 search warrant. At most, Plaintiffs identify abstract disagreements with state law, not a live controversy with CHP or Commissioner Duryee.

Plaintiffs' reliance on allegations that CHP "escorted" sheriff's vehicles on the day after the execution of the July 2024 search warrant is insufficient to invoke the *Ex parte Young* exception because, even if accepted as true, those allegations describe at most a past, and isolated incident. The Supreme Court has made clear that the exception requires a threat of a continuing violation of federal law, not "relat[ing] solely to past violations of federal law." *Green v Mansour*, 474 U.S. 64, 67 (1985). As set forth in Commissioner Duryee's motion to dismiss, Plaintiffs do not adequately allege that CHP plans to return, issue warrants, or otherwise enforce commercial cannabis laws on their reservation. Their sole factual allegation concerning CHP is limited to the day following the execution of Sheriff Kendall's search warrant, and Plaintiffs fail to cite to any evidence that such operation involved, or was directed by, a CHP policy or was a UCETF action. Opp. at 2:11-15; 7:15-17. Plaintiffs' failure to allege any "real and immediate threat" of CHP enforcement, defeats Plaintiffs' reliance on the *Ex parte Young* exception.

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Therefore, all claims against Commissioner Duryee remain barred by the Eleventh Amendment, and Plaintiffs' effort to shoehorn this case into the *Ex parte Young* exception is unavailing.

V. PUBLIC LAW 280 AUTHORIZES THE EXECUTION OF SEARCH WARRANTS FOR CRIMINAL ENFORCEMENT

Plaintiffs' claim that state officials may not execute criminal search warrants on tribal lands is foreclosed by PL 280. Congress granted California "jurisdiction over offenses committed by or against Indians in the areas of Indian country" to the same extent as elsewhere in the State. 18 U.S.C. § 1162(a).

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). When PL 280 grants a state criminal jurisdiction on Indian reservations or allotments, that grant includes the ordinary tools of criminal enforcement including the authority to issue and execute search warrants. As the Supreme Court recognized in *Nevada v. Hicks*, state officers executed state-court and tribal-court search warrants on a reservation in pursuit of state law violations and observed that "the State's interest in executing process is considerable." *Nevada v. Hicks*, 533 U.S. 353, 364-365 (2001). Moreover, in *State v. Schmuck*, the Washington Supreme Court emphasized that one of PL 280's primary aims was to remedy the "lack of adequate criminal law enforcement on some reservations," *State v. Schmuck*, 121 Wn.2d 373, 394 (1993), reinforcing the understanding that criminal jurisdiction under PL 280 is not nominal but must carry the means to enforce criminal law, including search warrants. These authorities collectively confirm that, in a PL 280 state like California, executing a valid state search warrant supported by probable cause is an essential tool of state criminal enforcement in Indian reservations or allotments.

Moreover, Plaintiffs' reliance on *Cabazon* mischaracterizes California's cannabis framework. Courts applying *Cabazon* make clear that the criminal/prohibitory versus civil/regulatory distinction turns on whether the state law reflects a general prohibition of

conduct, even if it carves out narrow exceptions, or instead reflects a broad allowance subject to regulation. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 209–210 (1987). Plaintiffs attempt to analogize cannabis licensing to the gambling regulations at issue in *Cabazon*, arguing that because California authorizes licensed cannabis activity, the scheme must be civil/regulatory. But that view mischaracterizes both *Cabazon* and the relevant cannabis statutes.

As argued in Commissioner Duryee's motion to dismiss, the Ninth Circuit in *Quechan Tribe v. McMullen*, 984 F.2d 304, 308–309 (9th Cir. 1993), rejected an identical argument when evaluating California's firework laws. Although California allowed the limited use of "safe and sane" fireworks, the court held the law was prohibitory in nature because the general intent of the statute was to criminalize fireworks possession and use, with only narrow exceptions. The same is true here. Commercial cannabis activity remains generally prohibited in California absent compliance with strict licensing provisions for *licensed* operators, and violations carry criminal penalties under the California Health and Safety Code for unlicensed operators. See, e.g., Cal. Health & Safety Code §§ 11358–11360. Therefore, far from transforming cannabis violations into mere regulatory infractions, California law retains its criminal prohibitory character regarding individuals engaged in unlicensed commercial cultivation and distribution. This clearly distinguishes cannabis from the gambling regulations at issue in *Cabazon* and authorizes law enforcement to investigate and prosecute such offenses under PL 280.

Thus, Plaintiffs' argument that cannabis licensure is the "norm" and prohibition the "exception" is inapposite. Opp. at 18:23-27. Like the fireworks regime in *Quechan*, California's cannabis framework is fundamentally prohibitory: unlicensed cultivation and distribution are categorically unlawful and subject to criminal enforcement. See Cal. Health & Safety Code §§ 11358 and 13359. In addition, those laws help to 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,* Cal. Health & Safety Code § 11361. Thus, the existence of a tightly controlled licensing exception

does not transform the underlying prohibition into mere regulation. Courts have rejected attempts to recast prohibitory statutes as regulatory schemes simply because they contain narrow exceptions, and Plaintiffs' reliance on *Cabazon* does not alter that conclusion. *Quechan Indian Tribe v. McMullen* (9th Cir. 1993) 984 F.2d 304.

Accordingly, even though neither CHP, nor Commissioner Duryee, were involved in the execution of the July 2024 search, this Court should reject Plaintiffs' request to declare that state law enforcement officials cannot execute search warrants for crimes related to unlawful commercial cannabis activities on tribal land. Moreover, for the reasons stated above, this Court should dismiss the FAC against Commissioner Duryee.

VI. ALTERNATIVE RELIEF UNDER RULE 56(D)

If the Court finds factual clarification necessary regarding CHP's role in the search warrant at issue, Commissioner Duryee requests relief under Rule 56(d). Limited discovery, such as dispatch logs or sworn declarations, would confirm CHP did not enforce cannabis laws during the July 2024 search. Rule 56(d) authorizes such relief when facts essential to justify opposition are unavailable.

CONCLUSION

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

Dated: October 6, 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 October 6, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **DEFENDANT COMMISSIONER SEAN DURYEE'S REPLY BRIEF IN SUPPORT OF HIS 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 October 6, 2025, at Sacramento, California.

Bryn Barton	*<u>/s/ Bryn Barton</u>*
Declarant	Signature

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