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15 Attorneys for Plaintiff
16 BISHOP PAIUTE TRIBE

17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA

19 BISHOP PAIUTE TRIBE) Case No.:
20 Plaintiff,)
21 vs.) COMPLAINT FOR DECLARATORY
22 INYO COUNTY; WILLIAM LUTZE, Inyo) AND INJUNCTIVE RELIEF
23 County Sheriff; THOMAS HARDY, Inyo)
24 County District Attorney.)
25 Defendants.)

26 **INTRODUCTION**

27 1. This action is for declaratory and injunctive relief by the Bishop Paiute Tribe
28 (“Tribe”), a federally recognized Indian Tribe, against Inyo County, the Inyo County’s Sheriff
and District Attorney, for the arrest and prosecution of a Bishop tribal law enforcement officer
for performing his duties on the Tribe’s Reservation. The Tribe seeks an order declaring that

1 Defendants are interfering with the Tribe's inherent sovereign authority to take action, defined
2 by federal law, against non-Indians perpetrators on tribal lands. Federal law establishes that
3 tribes have inherent authority over non-Indians on tribal lands to stop, restrain, detain, investigate
4 violations of tribal, state and federal laws, and deliver or transport the non-Indian to the proper
5 authorities. *Duro v. Reina*, 495 U.S. 676 (1990), *Ortiz-Barraza v. United States*, 512 F.2d 1176
6 (9th Cir. 1975). Defendants have arrested, and criminally charged, Daniel Johnson, a duly
7 authorized Bishop tribal law enforcement officer, while he was executing federal prescribed
8 police duties against a non-Indian, *on the Tribe's Federal Reservation*.

10 2. Officer Johnson was arrested on January 6, 2015, and is being charged with: (1) False
11 Imprisonment; (2) Impersonating a Public Officer; (3) Assault with a Stun-Gun; and (4) Battery
12 (misdemeanor.) (Exhibits 1 and 2) Defendants' actions stem from a December 24, 2014
13 incident that occurred on the Reservation, while Officer Johnson restrained and detained a non-
14 Indian offender for violations of a Tribal and State Domestic Violence Protection Order, and
15 subsequently delivering the suspect to an Inyo County sheriff's officer. At all times, Officer
16 Johnson was effectuating his official duties.

19 3. Following the arrest and charging of Officer Johnson, on January 6, 2015 Defendant
20 Sheriff Lutze sent the Tribe a "Cease and Desist Order" threatening future arrest and criminal
21 prosecutions against the Tribe's police officers individually or collectively for discharging their
22 official duties. (Exhibit 3)

24 4. Defendants' threat of arrest and prosecution of the Tribe's police officers directly
25 interferes with the Tribe's ability, and obligation, to maintain peace and security on its
26 Reservation. The arrest and prosecution of Officer Johnson, has been well publicized and is
27 causing confusion and misunderstanding among non-Indians visiting and/or living on the
28

1 Reservation, leaving some to believe that they are free to act lawlessly, and without
2 consequence, because the Tribe is without authority to take actions against them.

3 5. Defendants are violating established federal case law that holds that while tribes may
4 not “try and punish” non-Indians, they have inherent authority to restrain non-Indians determined
5 to be undesirable, detain them and turn them over to the proper authorities or to exclude the non-
6 Indian from tribal lands. Without this Court’s intervention and granting of the Tribe’s relief, the
7 Tribe’s ability to ensure public safety on its Reservation is and will continue to be threatened,
8 and exposes the public and the Tribe’s law enforcement officers to unnecessary risk.
9

10
11 **JURISDICTION**

12 6. This Court’s jurisdiction is based upon the following:

13 (a) 28 U.S.C. §1331, in that the Tribe’s claims arise under the Constitution and
14 the laws of the United States;

15 (b) 28 U.S.C §1362 in that the Tribe is a federally recognized Tribe which asserts
16 that defendants’ actions violate the Constitution and the laws of the United States;

17 (c) 28. U.S.C. §2201 and §2202, in that the Tribe seeks a declaration that it has
18 the right and authority to restrain, detain, investigate violations of tribal, state, and federal laws
19 by non-Indians on its Reservation, and to turn over or transport such non-Indians to the proper
20 authorities, and injunctive relief preventing Defendants from future interference with the Tribe’s
21 police authority over non-Indians on its Reservation.

22 **VENUE**

23 7. Venue is proper in the Eastern District Court of California pursuant to 28 U.S.C.
24 §1391(e) in that the Defendants and the Tribe reside in this District.

25 **PARTIES**

26 8. Plaintiff, the Bishop Paiute Tribe, is a federally recognized Indian Tribe. The Tribe’s
27 Reservation is located in the Eastern Sierra and the County of Inyo. Its Reservation consists of
28 875 acres of land located adjacent to the town of Bishop, California. The Tribe exercises powers

1 of self-government through its governing body, the Tribal Council, which consists of five (5)
2 officers duly elected from the general tribal membership.

3 9. Defendant Inyo County is a political subdivision of the State of California and
4 oversees public administration and the enforcement of state laws for a geographical area located
5 on the eastern side of the Sierra Nevada Mountains of California. Inyo County sets the salary for
6 the County Sheriff and District Attorney and has supervisory authority over their conduct and
7 use of public funds.

8 10. Defendant, William (“Bill”) Lutze is the duly elected Sheriff of Inyo County and a
9 County Officer. Defendant Lutze is responsible for providing law enforcement within the County
10 and oversees the Sheriff’s Department and its officers. Defendant Lutze authorized the arrest
11 warrant for Officer Johnson and authored, and transmitted, the “Cease and Desist Order” sent to
12 the Tribe on January 5, 2015.

13 11. Defendant, Thomas Hardy, is the duly elected District Attorney of Inyo County and
14 a County Officer. Defendant is responsible for all criminal prosecution within the County and
15 oversees the District Attorney’s Office and Assistant District Attorneys. Defendant filed the
16 felony complaint against Officer Johnson and is currently the District Attorney prosecuting the
17 case.

18
19 **SUMMARY OF FACTS**

20
21 12. The Tribe’s Reservation consists of 875 acres and supports a population of 1796. In
22 addition to home of Tribal Administration, the Reservation is home to the area’s Indian health
23 clinic, a tribal pre-school, the Tribal-TANF office, a tribal elder’s facility, community center, and
24 other tribal resource centers. Tribal enterprises on the Reservation includes a small to moderate
25 sized gaming facility, min-mart gas station, and tribal lands leased to federal, state and tribal
26 agencies. Through these forms of enterprises the Tribe has numerous non-Indians coming on to
27 the Reservation for services and entertainment. The Tribe’s gaming facility alone had 450,814
28 patrons visit the Reservation.

1
2 13. The Tribe established a Tribal Police Department in 2009 with financial assistance
3 through a federal Department of Justice Community Oriented Policing Services (COPS) grant.

4 The Mission of the Police Department is:

5
6 TO ENSURE THE SAFETY OF OUR TRIBAL MEMBERS, THEIR FAMILIES,
7 THEIR GUESTS AND OUR COMMUNITY NEIGHBORS. WE WILL STRIVE TO
8 PREVENT CRIME, PRESERVE THE PEACE, AND PROTECT OUR LANDS AND
9 HERITAGE. WITHOUT FAVOR OF PREJUDICE WORK COOPERATIVELY WITH
10 OTHER PUBLIC SAFETY AGENCIES TO PROVIDE A SAFE COMMUNITY AND
11 STRIVE TO ENHANCE OUR QUALITY OF LIFE. WE WILL, THROUGH FAIR
12 AND IMPARTIAL LAW ENFORCEMENT, ENSURE THE RIGHTS OF ALL
13 PEOPLE AS PROVIDED BY THE CONSTITUTION OF THE UNITED STATES OF
14 AMERICA AND THE INDIAN CIVIL RIGHTS ACT. (Exhibit 4)

15
16 14. The Tribal Police Department began small but has evolved over time since the
17 establishment of the Bishop Paiute Tribal Court and adoption of tribal laws to address public
18 safety needs of the community. In December 2012, the Tribal Police Department acquired a
19 professional, Law Enforcement Report Writing Software Program that allowed them to start
20 collecting, more accurate, data. This data is used to show that the Tribal Police Department is an
21 active force on the Reservation. In 2012, Tribal Police had approximately 500 responses. The
22 combined responses for 2013 and 2014 was 469 with 340 resulting in reports. (Exhibit 5) Many
23 of these responses were in conjunction with the Inyo County Sheriff's Department and Probation
24 Department, as well as, off-Reservation responses to emergencies, such as in traffic control for
25 fires in the town of Bishop and brush fire near the town of Big Pine.

26 15. Enforcement of tribal law is within the sole jurisdiction of the Tribe's Police
27 Department. The Tribe's laws are all civil and it does not currently exercise criminal
28 jurisdiction. Among others, the Tribe has enacted a: Nuisance Ordinance NO. 2000-03; Trespass
Ordinance NO. 2000-2; and Tribal Public Safety Ordinance NO. 2009-01. (Exhibit 6, 7, and 8).

1 The Tribal Public Safety Ordinance, Section 201, authorizes the Tribal Court to issue, and
2 thereafter enforce, “protective orders for the purposes of preventing violent or threatening acts,
3 harassment, or sexual violence involving Tribal community members.” In addition, Section 202
4 provides that the Tribal Court may give full faith and credit to valid protective orders issued by a
5 state or tribal court and enforce such orders “as if it were order of the of tribe.” Such full faith
6 and credit of state protective orders and the enforcement of such orders is also authorized under
7 federal law at 18 U.S.C. §§2265 and 2266.
8

9 16. The Tribe employs three Officers and a Chief of Police, who is a tribal member.
10 Tribal officer qualifications require at least two years of law enforcement experience and a
11 certification of completion from a Police Officer Standards & Training¹ (POST) state or federal
12 training institution or agency. (Exhibit 9). In addition Officers are required to have knowledge
13 of 18 U.S.C § 1662 and 28 U.S.C. § 1360 (common known as “Public Law 280”) and basic
14 federal Indian law. All applicants are subject to a pre-employment screening that includes
15 verification of past employment, education, certifications from other agencies, criminal
16 background check, credit checks, review of prior agency screenings and adjudication and a U.S.
17 Department of Justice background check. A member of the Inyo County Sheriff’s Department
18 and Bishop Police Department often sit in on the interviewing panel for the hiring of new tribal
19 police officers, and did so when Officer Johnson was interviewed for his current position.
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22 17. Specific to Officer Johnson, he has over 25 years of security and law enforcement
23 experience. Officer Johnson is well-versed on Public Law 280 and federal Indian law, having
24 worked as a tribal law enforcement officer for three tribes prior to joining the Bishop Police
25 Department. Office Johnson graduated from the San Bernardino Valley College POST certified
26
27

28 ¹ The requirements for a certified POST training course vary from state to state. In California a POST Regular Basic Course requires 664 hours covering 43 subject areas related to law enforcement.

1 academy in 1994 while a member of the California Army National Guard. (Exhibit 10) He also
2 completed 13 weeks of the 18-week Arizona POST Police Academy, which prior to attending
3 required he have a background clearance (verification of education, finger printed, polygraphed,
4 and psychological testing.) Officer Johnson has continued training through the Advance Officer
5 Training programs of Orange County and San Bernardino County Sheriffs' Departments and
6 other training facilities and agencies.² Officer Johnson holds a "Carry Concealed Weapon"
7 permit from Nevada and Arizona. (Exhibit 11) He also holds a California Security Guard card
8 and permits for an Exposed Firearm and Baton from the Bureau of Security & Investigative
9 Services. (Exhibit 12) Officer Johnson has also completed the San Bernardino County Sheriff's
10 Firearms Instructor course and has acted as a firearm instructor. Officer Johnson has also
11 received four hours of "Taser Use" training from the San Bernardino County Sheriff's
12 Department. (Exhibit 13)

15 18. Bishop Tribal Police duties include patrolling the Reservation, enforcing tribal
16 ordinances, conducting investigations, preparing reports, testifying in Tribal and State Court
17 when necessary, and other general law enforcement functions.

19 19. Tribal police are also required to interact with local law enforcement when incidents
20 arise on the Reservation involving criminal acts by persons who need to be arrested and taken
21 into custody, *including non-Indians*. The "Bishop Tribal Police Department, Policy and
22 Procedures," Department General Order, 3.1 Detentions, addresses detention of individuals for
23 investigation and releasing to outside law enforcement. Per the Order 3.1, a tribal officer has the

25 ² Riverside Community College Penal Code (P.C.) 832 training on: Arrest and Firearms; Powers of Arrest; and
26 Firearms Familiarization and Safety; Rio Hondo College POST Recertification-Basic Course; Orange County
27 Sheriff-Coroner Department training on: (POST) Basic Course Recertification; Laser Firearm Training; Tactical
28 Firearms Update; San Bernardino County Sheriff's Department POST courses on: Campus Law Enforcement;
Basic Driving Training; Hostage Situations; Advanced Subject Contacts; Dealing with Informants; Clandestine
Laboratory Safety; Search Warrants; ID, Collections & Preservation of Evidence; Drug Influence Recognition;
LERT; Defensive Tactic Instructors Course; PC 832 Firearms; PC 832 Power of Arrest; and Level III Modular
Format Training. (Exhibit 14 multiple documents)

1 responsibility when arriving on scene, before outside law enforcement arrives or for the purpose
2 of conducting an investigation for violations of Tribal Law and Ordinances, to detain the
3 suspected violator. In addition, 3.1 provides that a tribal officer may need to detain an individual
4 in order to: secure the scene; prevent the suspect from leaving the scene; and/or for officer or
5 public safety. In cases of detention, the tribal police officer is to notify the Tribal Chief of Police
6 and the Sheriff's Department. Non-Indians suspected of violating state law should be, as soon as
7 possible, turned over to outside law enforcement. (Exhibit 15)
8

9 20. Department General Order, 3.1 further addresses securing a detained person. A tribal
10 officer may handcuff the detained person, check for spacing with a minimum of two fingers to
11 avoid injury and secure the detained person in the custody area of the officer's police vehicle.
12 This policy ensures officer safety, the safety of the detained person, and the public. The officer is
13 also instructed to conduct a search of the detained person for weapons. Reasonable force may be
14 used to detain the person if necessary to: conduct an investigation, while enforcing tribal law, to
15 overcome resistance or the threat of resistance or prevent an unlawful attack. Finally, any person
16 detained and that has been determined to have violated California criminal law, shall be turned
17 over to outside law enforcement as required by policy and existing case law. (Id.)
18
19

20 21. On December 24, 2014, Officer Johnson received an on-Reservation call from a
21 tribal member reporting that his non-Indian ex-wife was violating the member's Tribal and State
22 Protective Order by being at his home and causing a disturbance. Officer Johnson, while in route
23 to the tribal member's home, notified the sheriff's dispatch of the tribal member's address and
24 nature of the call. (Exhibit 16)
25

26 22. The non-Indian in question is well known to both tribal and local law enforcement.
27 During a 9-month-period in 2014, tribal police responded to 11 calls involving the suspect.
28

1 Seven of these calls involved joint responses with the sheriff's department and 2 of the incidents
2 resulted in her arrest by the sheriff for violation of a State Protective Order. (Id.) Officer
3 Johnson was the tribal officer involved in 8 of the 11 calls involving the suspect and cited her 4
4 times for violation of any active Tribal Protective Orders.

5 23. Officer Johnson, with prior experience with suspect, arrived at the scene in a marked
6 Tribal Police Patrol vehicle and wearing a tribal police uniform. As he approached the suspect in
7 her vehicle, he identified himself as "Tribal Police." After informing the suspect that she was not
8 allowed to be at the tribal member's home by order of both the Tribal and State courts, the
9 suspect became angry, verbally abusive, and insisted that she had a right to be at the home to
10 visit her son. Officer Johnson informed the suspect that he was going to detain her for actively
11 violating the state Protective Order and she would be cited for violating the tribal Protective
12 Order, and for Trespass and Nuisance. (Id.)

13 24. Officer Johnson repeatedly ordered the suspect out of her vehicle but she resisted
14 and continued to yell that she had the right to see her son. As Officer Johnson tried to remove her
15 from the vehicle, she began kicking at Officer Johnson making contact with his left inner thigh.
16 (Id.) At this point, Officer Johnson removed his Taser and placed it in "Drive Stun" mode. In
17 implementing his duties, Officer Johnson warned the suspect that he would deploy his Taser if
18 she refused to exit the vehicle. The suspect remained defiant and Officer Johnson applied his
19 Taser. Having no effect on the suspect, Officer Johnson again warned the suspect that he would
20 use the Taser if she did not exit the vehicle. The suspect again refused and Officer Johnson again
21 applied his Taser in "Drive Stun" mode. This exchange occurred one additional time with the
22 suspect still refusing to obey Officer Johnson. (Id.)

1 25. Moments later, an Inyo County Sheriff's deputy arrived and immediately
2 encountered several family members who had gathered outside the home and were verbally
3 abusive toward Officer Johnson. The deputy attempted to calm the situation and have people
4 return to the house. He was met with resistance from certain family members who were shouting
5 and acting in a threatening manner. The deputy at this time requested assistance from the Bishop
6 Police Department due to the fact that he and Officer Johnson were outnumbered and the
7 hostility of the suspect and family members. (Exhibit 17)
8

9 27. Officer Johnson finally gained control of the suspect's left arm and was able to
10 remove her from the vehicle. The deputy assisted by taking hold of the suspect's right arm as
11 Officer Johnson took the suspect to the ground. While on the ground the deputy placed the
12 suspect's right arm behind her back and Officer Johnson proceeded to handcuff her. Family
13 members were again yelling and became hostile toward the deputy and Officer Johnson, and the
14 deputy feared they would attack them. The deputy pointed his department issued Oleoresin
15 Capsicum (pepper) spray toward two interfering onlookers, who finally retreated, while Officer
16 Johnson placed the suspect in his patrol car. (Id.)
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19 28. At this time, a County Sheriff's Department Acting Lieutenant and Detective, and a
20 Bishop City Police Detective arrived at the scene. The deputy proceeded to conduct an
21 investigation and ran an automated records check through dispatch and determined that the
22 suspect had an active restraining order against her and was also actively on probation with terms
23 and conditions not to contact her tribal member ex-husband. Based upon discussions with the
24 suspect's ex-husband, who did not want to see the suspect arrested, but only to leave his
25 property, the sheriff officers did not arrest the suspect. The deputy informed the suspect that he
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1 would be referring charges to the Inyo County Probation Department. Officer Johnson cited the
2 suspect with Trespass, Nuisance and violating the tribal and state Protective Orders. (Id.)

3 29. Before leaving the scene the deputy asked the suspect if she was injured as he
4 noticed a small abrasion on a toe of her left foot. The suspect complained of injury to her
5 abdominal area, and revealed her stomach to the deputy, who observed a slight redness. Officer
6 Johnson asked the suspect if she wanted an ambulance to respond, but she refused medical aid.
7 The suspect was then released without further incident. (Id.)

8
9 30. The following week, the Sheriff's Department conducted an investigation on the
10 December 24, 2014 incident and submitted it to the District Attorney's office. On January 5,
11 2015 a Felony Complaint was filed by Defendant Hardy in the Inyo County Superior Court
12 charging Officer Johnson with three felonies and one misdemeanor.
13

14 31. On January 6, 2005, Defendant Lutze issued a "Cease and Desist Order" to the Tribe
15 ordering all Tribal Police to cease and desist enforcement of California Statutes and possessing
16 firearms outside of tribal property. The letter accuses tribal officers of exercising "state police
17 powers under the color of authority of Bishop Paiute tribal law..." and emphasizes that Tribal
18 Police have no legal authority to enforce any state or federal laws *on or off the reservation* and
19 have only the rights of "private citizens."
20

21 32. The Tribe responded to Defendant Lutze's letter/order assuring the Defendant that
22 its Police Officers would not exercise state police authority (which they already did not exercise)
23 and only carrying their firearms off Reservation coming to and from work and when their patrol
24 on Reservation requires them to cross State Hwy 168 and when traveling on U.S. Highway 395.
25 As for exposing their firearms off reservation, the Tribe would caution its Officers to only
26 expose their firearms within the legal limits of applicable state law.
27
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1 33. At this time the criminal case against Officer Johnson is moving forward and he is on
2 desk duty unable to perform his regular duties until the criminal case against him has been
3 resolved.

4 **CAUSE OF ACTION**

5
6 34. The Tribe realleges each of the allegations set forth in paragraphs 1-33 above and by
7 this reference, incorporates each such allegation herein as if set forth in full.

8
9 35. Federal law establishes that tribes, as sovereign governments, have inherent authority
10 to establish their own laws and to enforce those laws on tribal lands. *Williams v. Lee*, 358 U.S.
11 217 (1959). Tribal inherent authority includes the right to establish a tribal police department and
12 employ tribal law enforcement officers to enforce its laws. *Ortiz-Barraza v. United States*, 512 F.
13 2d 1176 (1975); *Walker v. Rushing*, 898 F.2d 672 (8th Cir. 1990); *Cabazon Band of Mission*
14 *Indians v. Smith*, 34 F. Supp.2d 1195 (Cal. C.D. 1998). However, federal law has defined a
15 tribe's civil and criminal authority over non-Indians.
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18 36. Ruling on a tribe's civil jurisdiction over non-Indians on fee lands within the
19 boundaries of an Indian reservation, the Supreme Court found that there was not jurisdiction with
20 two exceptions: (1) the non-member has entered into consensual relationships with tribe or its
21 members by commercial dealings; or (2) the non-Indian's conduct threatens or directly affects
22 the "political integrity, the economic security, or the health or welfare of the tribe." *Montana v.*
23 *United States*, 450 U.S. 544, 565-66 (1981). The *Montana* test, as it is commonly referred to, has
24 been expanded to include non-Indian conduct on tribal lands within the reservation. *Nevada v.*
25 *Hicks*, 533 U.S. 353, 360 (2001)(finding that the tribal court did not have jurisdiction over tribal
26 member's civil rights action over state game wardens who executed a search warrant of the
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1 member's residence on tribal trust land. "The ownership status of land, in other words, is only
2 one factor to consider in determining whether regulations of activities of nonmembers is
3 'necessary to protect tribal self-government or control internal affairs'"

4
5 The Supreme Court has also spoke on a tribe's criminal authority over non-Indians. In
6 *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) the Court held a tribe has no criminal
7 jurisdiction to "try and punish" a non-Indian.³

8
9 37. Within this federal jurisdictional framework, the Supreme Court has held that no
10 person is free to act without impunity on tribal lands and that:

11 Tribal law enforcement authorities have the power to *restrain* those who disturb public
12 order on the reservation, and if necessary, to eject them. Where jurisdiction to try and
13 punish an offender rests outside the tribe, tribal officers may exercise their power to
14 *detain* the offender and transport him to the proper authorities." *Duro v. Reina*, 495 U.S.
15 676, 697 (1990) (Emphasis added).

16 38. The Court's holding in *Duro* is consistent with lower federal court and state court
17 holdings on the authority of tribal law enforcement to restrain and detain non-Indians, to
18 investigate possible violations of tribal, state, or federal law, and to transport or deliver up such
19 non-Indian violators to the proper authorities. In *Ortiz-Barraza v. United States*, 512 F. 2d 1176
20 (9th Cir. 1975), the court found that the Papago tribal police officer's stopping, detaining and
21 searching on the reservation of a non-Indian, which uncovering illegal drugs, within the tribe's
22 authority and the search and seizure was reasonable. Finding specifically, "The power of the
23 Papago to exclude non-Indians state and federal violators from the reservation would be

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25
26 ³ The Supreme Court extended this limitation on tribal criminal jurisdiction to non-member Indians in *Duro v.*
27 *Reina*, 495 U.S. 676 (1990). Congress responded to *Duro* by amending the Indian Civil Rights Act, 25 U.S.C. §
28 1301(2) and recognized and affirmed the "inherent power of Indian tribes exercise criminal jurisdiction" over non-
members Indians. *United States v. Lara*, 541 U.S. 193, 198 (2004)

1 meaningless were tribal police not empowered to investigate such violators.” *Ortiz-Barraza v.*
2 *United States*, 512 F. 2d at 1180.

3 39. The same court found that Tohono O’odham tribal rangers acted as tribal agents, and
4 not as private citizens, when they stopped and detained, in the back of their ranger vehicle, a
5 non-Indian on the reservation and discovered 20 illegal aliens in the non-Indian’s van. *United*
6 *States v. Becerra-Garcia*, 397 F. 3d. 1167, (9th Cir. 2005). The 8th Circuit has similarly held that
7 the stopping and transporting of a non-Indian violator of state law (Driving Under the Influence
8 (DUI)) on the reservation and detaining him over night at the tribal police station was reasonable
9 under the circumstances and in response to the local law enforcement officer’s request.
10

11 40. Also instructive is the Supreme Court of Washington case of *State of Washington v.*
12 *Schmuck*, 850 P. 2d 1332 (1993). Although not controlling, *Schmuck* has been cited with
13 approval by the Supreme Court in *Strate v. A-1 Contractors*, 520 U.S. 438 (1997). The court in
14 *Schmuck*, relying in part on *Ortiz-Barraza v. United States*, found that a Suquamish Tribal Police
15 Officer had the *inherent authority* to stop, restrain, and investigate a non-Indian on the
16 reservation suspected of violating state (DUI) and tribal law and to detain the non-Indian for
17 state authorities to charge and prosecute the non-Indian. *State of Washington v. Schmuck*, 850 P.
18 2d 1332 (1993) The court relied upon the practical and unrealistic outcome if the tribal officers
19 were not empowered to take such actions against a non-Indian violating state law on the
20 reservation.
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23

24 In this case, if the Suquamish Indian Tribe did not have the authority to detain, Schmuck
25 would have been free to drive away with an alcohol level exceeding the limit for legal
26 intoxication. In the 20 minutes that it took for Trooper Clark to respond, Schmuck could
27 have easily caused extensive property damage or seriously injured other motorists. He
28 could have also left the Reservation and eluded capture by the State Patrol.” *State of*
Washington v. Schmuck, 850 P. 2d at 1342

1 The court in *Schmuck* also took note of the New Mexico Court of Appeals holding in *State v.*
2 *Ryder*, 649 P. 2d 756 (1982) that:

3 To hold that an Indian police officer may stop offenders but upon determining they are
4 non-Indians must let them go would be to subvert a substantial function of Indian police
5 authorities and produce a ludicrous state of affairs which would permit non-Indians to act
6 unlawfully, with impunity on Indian lands.” *State v. Ryder*, 649 P. 2d at 759.

7 42. The Defendants’ arrest and charging of Tribal Officer Johnson for restraining—with
8 assistance, and in coordination with Defendant’s Lutze’s own officer—a non-Indian violator of
9 state and tribal law on the Reservation, and detaining her for charging and prosecution by
10 Defendants, violates federal common law.

11 43. Defendants’ threat of future arrests and charging of the Tribe’s officers for carrying
12 out their lawful and duly authorized power, is a direct, and immediate interference, with the
13 Tribe’s sovereign authority to provide public safety on its Reservation.

14
15 **PRAYER FOR RELIEF**

16 Pursuant to the forgoing, the Tribe prays the Court grant the following relief:

17 44. A declaration that Defendants’ actions of arresting and charging Tribal Officer
18 Johnson and future threat of criminal prosecution of the Tribe’s police officers, violates federal
19 common law and directly interferes with the Tribe’s inherent authority to maintain a police
20 department and protect public safety on its Reservation.

21 45. A declaration that the Tribe’s police officers have the authority on its Reservation to
22 stop, restrain, investigate violations of tribal, state, and federal law, detain, and transport or
23 deliver a non-Indian violator to the proper authorities. By carrying out these federally authorized
24 actions, the Tribe’s duly authorized law enforcement officers are not impersonating a state
25 officer nor is their restraint, investigation and detention of a non-Indian, in compliance with
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1 provisions of the Indian Civil Rights Act, an “arrest” for purposes of a state criminal charge of
2 false imprisonment.

3 46. The Defendants be enjoined from arresting and criminally charging the Tribe’s duly
4 authorized police officers, acting in compliance with the Indian Civil Rights Act, for carrying out
5 their duties as clearly delineated under tribal and federal law, or otherwise interfering and
6 threatening tribal officers while executing their duty.
7

8 47. Any and all further relief as deemed appropriate by the Court.

9 48. Attorney fees and costs.
10

11 DATE March 6, 2015

CALIFORNIA INDIAN LEGAL SERVICES

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13
14
15 By: /s/ Dorothy Alther
Dorothy Alther

16
17 /s/ Jasmine Andreas

18 Jasmine Andreas
19 Attorneys for the Plaintiff
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