

1 LESTER J. MARSTON
 California State Bar No. 081030
 2 RAPPORT AND MARSTON
 405 West Perkins Street
 3 P.O. Box 488
 Ukiah, CA 95482
 4 Telephone: 707-462-6846
 Facsimile: 707-462-4235
 5 e-mail: marstonl@pacbell.net

6 Attorneys for David Mendoza

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 8 **SUPERIOR COURT OF CALIFORNIA**
 9 **COUNTY OF LAKE**

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|----|-------------------------------|---|-------------------------------|
| 11 | GARY SABALONE, |) | Case No. 409878 |
| 12 | Person asking for protection, |) | |
| 13 | vs. |) | DECLARATION OF JOHN IRWIN IN |
| 14 | DAVID MENDOZA, |) | SUPPORT OF OPPOSITION TO |
| 15 | Person to be restrained. |) | REQUEST FOR RESTRAINING ORDER |
| 16 | |) | AND IN SUPPORT OF MOTION TO |
| | |) | QUASH, DEMURRER, AND MOTION |
| | |) | TO DISMISS |
| | |) | DATE: March 24, 2011 |
| | |) | TIME: 8:15 a.m. |
| | |) | DEPT.: 1 |

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 18 I, JOHN IRWIN, declare:

19 1. I am a sergeant in the Robinson Rancheria Police Department and a Bureau of
 20 Indian Affairs, Office of Justice Services federally commissioned law enforcement officer
 21 (Commission # 4652). I am submitting this declaration in support of Police Chief David
 22 Mendoza's opposition to the request for a restraining order and in support of his motion to
 23 quash, demurrer, and motion to dismiss filed in the above-entitled matter. The information
 24 contained in this declaration is based upon my own personal knowledge and, if called as a
 25 witness in these proceedings, I could competently testify thereto.

26 2. On November 3, 2010, I was on duty, in uniform, and driving a marked black
 27 and white police radio squad car. I was on the Robinson Band of Pomio Indian's Reservation
 28

1 ("Reservation"), which is my primary jurisdiction area.

2 3. Police Chief Mendoza was also on duty and in uniform on that day. Chief
3 Mendoza received a request for a civil standby from Anthony Duncan, the director of land
4 management for the Robinson Environmental Center. This request was reviewed by Chief
5 Mendoza and approved.

6 4. Chief Mendoza notified me of the request for civil standby. I contacted Duncan
7 at the Robinson Environmental Center at 11:20 a.m. I spoke with Duncan in his office. He
8 introduced me to a number of people who are Robinson Rancheria government employees, who
9 were there to conduct water well testing on all of the Robinson Rancheria properties. I was
10 informed by Duncan and other members of the testing crew that one of the water wells on the
11 Reservation is located next to a private property parcel owned by Gary Sabalone.

12 5. Duncan and the other members of the testing crew informed me that Sabalone
13 had caused issues for them in the past when they had tested the well next to his property. They
14 stated that, on one occasion, Sabalone closed and locked the gate after they had driven to the
15 well site and refused to allow them to leave. They further stated that, on another occasion,
16 Sabalone confronted them and brandished a firearm while they were in the course of their
17 duties testing the well.

18 6. I requested that Duncan show me the exact location of the well with respect to
19 the property line of the private property in question. Duncan showed me a Lake County parcel
20 map as well as a GPS boundary map. Both maps were certified by the County of Lake and the
21 United States government. According to the maps, the well is close to the property line; it is,
22 however, clearly on Reservation trust property. The maps also showed that the parcel owned by
23 Sabalone is completely encompassed within the boundaries of the Reservation and that the
24 easement road to his property is on Reservation trust property.

25 7. At that point, I asked the testing crew when they wanted to conduct their well
26 testing. We all agreed to start at 1:00 p.m.

27 8. At 1:00 p.m., I was met by Duncan and the testing crew. We drove to the
28 location of the well. At this location, there is a dirt road that begins from the Old Upper Lake

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1 Road and goes north approximately 140 yards to a chainlink gate. The gate was closed, but not
2 locked. Duncan told me the gate was the private property boundary. On either side of the gate
3 was an old dilapidated barbed wire fence. This fence ran parallel to the length of the dirt
4 easement road and connected to the gate. This same fence line connected to the gate and went
5 approximately another thirty yards to the north and ended in a drainage ditch.

6 9. Duncan showed me the location of the water well. The well was in an open
7 field. There was no fence line or obvious indication of the boundary of the private property line
8 adjacent to the well. I did see wooden stakes with ribbon attached and painted tops of fence
9 posts near the water well. Although these indicators were not a definitive boundary marking, I
10 believed they were a general indicator of the property line based on the parcel map I had
11 inspected earlier.

12 10. I directed Duncan and the testing crew to go around the fence line. They drove
13 their vehicles around the fence line and set up all of their equipment at the water well location.
14 I parked my squad car on the shoulder of the easement road and walked around the fence line to
15 the test location. The water test was scheduled to take approximately three hours. I stood by for
16 approximately two and a half hours without incident. From my location at the test site, I could
17 clearly see Sabalone's residence on top of the hill as well as vehicles parked at the residence.

18 11. At approximately 3:20 p.m., I received a call of a traffic collision on the Old
19 Lake County Road. The initial report was a single vehicle rollover, which was believed to be
20 on the Reservation. Because I had had no interaction with the property owner for over two
21 hours, I cleared from the civil standby and responded to the traffic accident. Chief Mendoza
22 also responded to the accident scene. The accident scene was just outside of the Reservation.
23 There were no injuries to the driver or passenger. I, therefore, returned to the water well
24 location and continued to stand by. Chief Mendoza stood by the accident scene and waited for
25 the California Highway Patrol.

26 12. At approximately 4:00 p.m., the water well testing was still taking place. It was
27 necessary that I clear that location as I was going off duty. I called Chief Mendoza and
28 requested that he take over for me. I met Chief Mendoza at the Old Lake County Road at the

1 intersection of the easement road. We drove the length of the road and stopped at the gate. We
2 were in separate police vehicles and parked them on the shoulder of the easement road. I
3 walked down the fence line and to the well site. Chief Mendoza walked through the unlocked
4 gate to the edge of the drainage ditch next to the fence line.


5 13. At that time, I noticed a white compact pickup truck drive from the private
6 property residence and down the driveway to the location where Chief Mendoza was standing.
7 I was approximately fifty feet away from Chief Mendoza. I could see and hear a white male
8 adult, who was later identified to me as Sabalone, begin to yell at Chief Mendoza and ask him
9 if he could read. I then heard this subject tell Chief Mendoza that he did not know or care who
10 he was and that Chief Mendoza's uniform did not frighten him. This subject went on to say
11 that Chief Mendoza was trespassing and if necessary he would have the sheriff come and arrest
12 him.

13 14. Chief Mendoza was in full police uniform at this time. I walked to the location
14 of Chief Mendoza and the male subject who was still seated in his pickup truck. As I
15 approached, I could hear Chief Mendoza attempting to calm the subject down and explain who
16 he was and why he was at that location. At the time that I reached the two men, I could hear
17 both talking calmly and rationally. I asked the property owner if he agreed the well was not on
18 his property. He agreed. I then asked if the wooden stakes and painted fence post were the
19 boundary line to his property, as there was no fence line in that area. The property owner told
20 me that the wooden stakes were survey markers and they were in the proper location of the
21 property line. I then asked the property owner if he was upset about the testing engineers
22 testing the water well. He told me as long as they stayed off of his property, he did not care
23 what they did.

24 15. Chief Mendoza and the property owner continued their conversation for a period
25 of time. I contacted the testing crew and advised them that I had just talked with the property
26 owner and he did not care about their testing process. I directed them to drive their vehicles out
27 the same way they came in. The testing crew understood and agreed. As I was walking back to
28 my squad car, I could see that the property owner and Chief Mendoza were still talking

1 rationally. I further saw Chief Mendoza shake the property owner's hand as they parted. At
2 that point, I left the location.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed this 21 day of March, 2011, in Nice, California.

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7 _____
8 JOHN IRWIN

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