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 8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**  
 10 **SAN FRANCISCO DIVISION**

12	RESIGHINI RANCHERIA, FRANK DOWD, )	Case No. CV 11 6710 EMC
	and GARY DOWD, )	
13	)	
	Plaintiffs, )	
14	)	JOINT CASE MANAGEMENT
	vs. )	STATEMENT ; ORDER
15	)	
16	DEAN WILSON, individually and in his )	DATE: January 3, 2013
	official capacity as Del Norte County Sheriff, )	TIME: 9:00 a.m.
17	)	CTRM.: 5, 17 <sup>th</sup> Floor
	Defendant. )	
18	_____ )	

19 Pursuant to Fed. R. Civ. P. 26(f), Civ. L. R 16-9, and this Court’s standing order, the  
 20 parties, having met and conferred, file the following case management statement:

21 Plaintiffs’ filed their First Amended Complaint (“Amended Complaint”) in this matter on  
 22 July 2, 2012, following the dismissal without prejudice of plaintiffs’ claims against defendant  
 23 Charleton H. Bonham individually and in his official capacity as the Director of the California  
 24 Department of Fish & Game, pursuant to the Court’s May 31, 2012, Order Granting Defendants’  
 25 Motion to Dismiss. In the Amended Complaint, the plaintiffs named as defendant Dean Wilson  
 26 individually and in his official capacity as the Del Norte County Sheriff. The Amended Complaint  
 27 was served on defendant Wilson on July 27, 2012. Defendant Wilson has not filed an answer or  
 28 other responsive pleading in this case. On August 15, 2012, legal counsel for the plaintiffs were

1 informed by the office of the County Counsel for Del Norte County that the County Counsel had  
2 received authorization to represent defendant Wilson in this matter on August 14, 2012. County  
3 Counsel's office, therefore, requested an extension of time to file an answer. Plaintiffs stipulate  
4 to an extension of time and the Court entered an order granting the extension. The defendant's then  
5 filed a motion to dismiss on September 19, 2012. Following the filing of the motion to dismiss the  
6 parties entered into substantive settlement negotiations that resulted in the parties filing a  
7 stipulation with the Court on October 10, 2012, staying proceedings in the case for 60 days to allow  
8 the parties to continue to pursue settlement of the case. Since the filing of the October 10, 2012,  
9 stipulation, the parties have been negotiating in good faith. The parties have reached a tentative  
10 settlement of the case and have reduced that settlement to writing in the form of a writing  
11 stipulation for entry of judgment. Counsel for both parties are currently reviewing the proposed  
12 settlement with their respective clients. Given the holidays, the parties anticipate that they will need  
13 an additional 60 days to concluded their settlement negotiations and request that the Court set a  
14 new date for the case management conference 60 days from today's date.

15 1. **Jurisdiction and Service:** The Court has jurisdiction over Plaintiffs' claims based  
16 upon 28 U.S.C. § 1331, in that the Plaintiffs' claims arise under the Constitution and laws of the  
17 United States; and (b) 28 U.S.C. § 1362, in that this civil action is brought by a federally  
18 recognized Indian tribe whose claims arise under the Constitution and the laws of the United States.  
19 There are no issues with regard to venue and, no defendants remain to be served, pending the filing  
20 of a second amended complaint.

21 2. **Facts:** Plaintiffs Gary Dowd and Frank Dowd ("Individual Plaintiffs"), members  
22 of the plaintiff Resighini Rancheria ("Tribe"), were cited for California Fish and Game Code  
23 violations, specifically, fishing on the Klamath River without a Yurok Tribal ID. Plaintiffs allege  
24 both citations were issued by law enforcement officers deputized by the Sheriff to exercise state  
25 peace officer powers and to enforce California law. In each instance, the Individual Plaintiffs were  
26 fishing within the boundaries of the old Klamath River Reservation/Extension. The Del Norte  
27 County District Attorney later dismissed all charges against both Individual Plaintiffs. Plaintiffs  
28 maintain that the Individual Plaintiffs were fishing pursuant to the federally reserved fishing rights



1 engaged in discovery or developed a discovery plan pursuant to Rule 26(f) because the parties have  
2 been putting all of their efforts into settling the case.

3 9. **Class Action:** This is not a class action.

4 10. **Related Cases:** There are no related cases.

5 11. **Relief:** Plaintiff seeks the following relief. (1) A declaration that defendant Wilson  
6 and the peace officers deputized by the Del Norte County Sheriff's Department ("Department") and  
7 exercising the State of California peace officer powers delegated to them by defendant Wilson have  
8 no jurisdiction to enforce the provisions of the California Fish and Game Code against members  
9 of the Tribe within the boundaries of the old Klamath River Reservation/Extension; (2) A  
10 declaration that, under P.L. 280, defendant Wilson and officers deputized by the Department,  
11 exercising the State of California peace officer powers delegated to them by defendant Wilson, lack  
12 civil regulatory authority over the Tribe's regulation of fishing by its members on the Klamath  
13 River within the old Klamath River Reservation/Extension; (3) A declaration that defendant  
14 Wilson and the Department, under color of State law (the provisions of the California Fish and  
15 Game Code) have deprived plaintiffs Frank Dowd and Gary Dowd and the members of the Tribe  
16 of the right to fish in the Klamath River within the old Klamath River Reservation/Extension free  
17 of state regulation and control, a right guaranteed to them by federal law, in violation of 42 U.S.C.  
18 § 1983; (4) An order preliminarily and permanently enjoining defendant Wilson, his agents and  
19 employees, and law enforcement officers exercising State of California peace officer powers  
20 delegated to them by defendant Wilson from citing members of the Tribe for fishing on the  
21 Klamath River within the old Klamath River Reservation/Extension not in accordance with State  
22 law; and (5) Award the plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C.  
23 § 1988.

24 12. **Settlement and ADR:** The parties have not discuss utilizing the ADR process  
25 because the attorneys for the parties have reached agreement on a tentative settlement of the case.

26 13. **Consent to Magistrate Judge for All Purposes:** This matter has already been  
27 assigned to Judge Chen.

28 14. **Other References:** The parties have not discussed the suitability of the case for

1 reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation  
2 because the parties have been pursuing settlement of the case.

3 15. **Narrowing of Issues:** The parties have not discussed the likelihood of narrowing  
4 the issues in this case because they have been pursuing settlement of the case. However, the parties  
5 agree that the issues in this case are limited, legal issues, and that all but one fact about the  
6 deputation of an officer is undisputed.

7 16. **Expedited Trial Procedure:** The parties agree that, because, the issues in this case  
8 are limited, legal issues, summary proceedings will be appropriate in this case.

9 17. **Scheduling:** The parties have not discussed scheduling because they are pursuing  
10 settlement, except to determine how much additional time they need to concluded settlement  
11 negotiations.

12 18. **Trial:** The parties have not discussed the issues relating to trial because they are  
13 pursuing settlement of the case, but the parties expect the case to be determined based on a motion  
14 to dismiss or cross motions for summary judgment.

15 19. **Disclosure of Non-party Interested Entities or Persons:** The parties have not  
16 discussed submission of disclosures of non-party interested entities or persons because they are  
17 pursuing settlement of the case.

18 20. **Other Matters:** The parties request that the Case Management Conference in this  
19 matter, presently scheduled for January 3, 2013, be rescheduled to 60 days from the date of the  
20 filing of this joint case management statement to allow the parties the opportunity to concluded  
21 settlement negotiations.

22 Dated: December 28, 2012

Respectfully Submitted,

RAPPORT AND MARSTON

25 By: /s/ Lester J. Marston

26 LESTER J. MARSTON  
27 Attorneys for Plaintiffs  
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1 Dated: December 28, 2012

DEL NORTE COUNTY COUNSEL

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By: /s/ Gretchen Stuhr  
GRETCHEN STUHR  
Attorney for Defendant

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6 IT IS SO ORDERED that the CMC is reset from 1/3/13 to 3/7/13 at 9:00 a.m. A joint  
7 CMC Statement shall be filed by 2/28/13.

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9 Edward M. Chen  
U.S. District Judge

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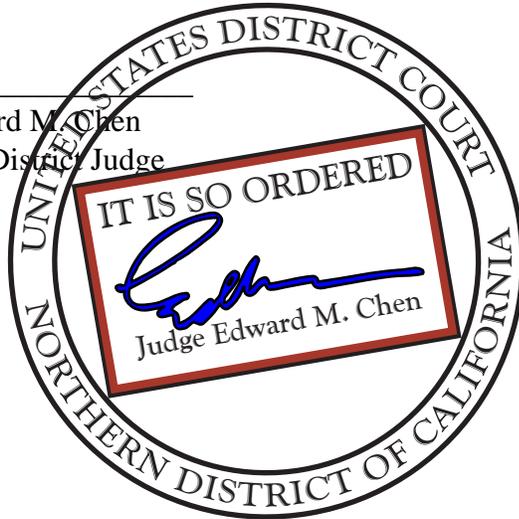
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1 **CERTIFICATE OF SERVICE**

2 I, LESTER J. MARSTON, hereby certify that a copy of the foregoing document was this date  
3 served upon all counsel of record by electronically filing the foregoing with the Clerk of the U.S.  
4 District for the Northern District of California, using its ECF system, which automatically provides  
5 electronic notification to the following:  
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24 Attorney for Dean Wilson

25 /s/ Lester J. Marston  
26 LESTER J. MARSTON, Attorney  
27 for Plaintiffs  
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