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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10
11 **WILLIAMS & COCHRANE, LLP;**

12 vs.

13 **ROBERT ROSETTE; ROSETTE &**
14 **ASSOCIATES, PC; ROSETTE, LLP;**
15 **QUECHAN TRIBE OF THE FORT**
16 **YUMA INDIAN RESERVATION, a**
federally-recognized Indian tribe; and
17 **DOES 1 TO 100.**

Case No.: 17-CV-01436 GPC MSB

WILLIAMS & COCHRANE'S EX
PARTE MOTION TO STAY
DISCOVERY FOR SIXTY DAYS

Date: NA
Time: NA
Dept: 2C
Judge: The Honorable Michael S.
Berg

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Case No.: 17-CV-01436 GPC MSB

WILLIAMS & COCHRANE'S EX PARTE MOTION TO STAY DISC. FOR 60 DAYS

INTRODUCTION

1
2 Through this motion, Plaintiff Williams & Cochrane, LLP (“Williams & Cochrane” or
3 “Firm”) moves the Court *ex parte* for an order staying discovery for at least sixty (60)
4 days – with a status conference seven (7) days before the end of this period to discuss im-
5 pending issues and/or whether a continuation of the stay is warranted – on account of the
6 Coronavirus Disease 2019 (“COVID-2019”) and the difficulties it will impose on both
7 finishing party discovery and issuing subpoenas to third parties for either documents or
8 appearances at depositions. Both of these issues will be discussed in more detail in the ar-
9 gument section below.

10 In terms of compliance with the meet and confer requirements of the Local Rules and
11 this Court’s Civil Chamber Rules, Williams & Cochrane first raised the prospect of stay-
12 ing discovery and extending the dates of the discovery cut offs during a March 11, 2020
13 conference call devoted, in part, to the Defendants’ attempts to conduct expedited deposi-
14 tions of both Cheryl Williams and Kevin Cochrane. *See* Declaration of Cheryl A. Wil-
15 liams (“Williams Decl.”), ¶ 2. In response to this stay request, counsel for the Rosette De-
16 fendants indicated that her client would not agree to a stay while counsel for the Quechan
17 Tribe of the Fort Yuma Indian Reservation (“Quechan” or “Tribe”) explained that he
18 could not make a firm commitment at the time, but he had no reason to deviate from the
19 position taken by his colleague. *See* Williams Decl., ¶ 2. The ensuing week, counsel for
20 the Rosette Defendants once again opposed the idea of a discovery stay in her portion of
21 the March 18, 2020 joint motion related to her client’s failure to comply with this Court’s
22 February 4, 2020 Order, explaining that Williams & Cochrane’s request for a discovery
23 stay “is procedurally improper and wholly unwarranted.” Dkt. No. 274, p. 5, n.4. Despite
24 this, Williams & Cochrane sent out one final notice on March 19, 2020 to explain that it
25 would move the Court *ex parte* for a sixty (60) day stay of discovery, to inquire whether
26 the Defendants’ “position[s] ha[ve] changed since th[e] time” of the initial discussion
27 during the March 11th meet and confer, and to indicate that Williams & Cochrane was a-
28 vailable “today to meet and confer if your position[s] ha[ve] changed or if you would be

1 amenable to a stay of a different duration.” *See* Williams Decl., ¶ 4. Neither party indi-
 2 cated a change in position nor a desire to meet and confer prior to the expected filing time
 3 of the *ex parte* motion. *See* Williams Decl., ¶ 4.

4 ARGUMENT

5 **I. ABSENT A STAY OF REASONABLE DURATION, COVID-19 WILL ENSURE THAT WIL-** 6 **LIAMS & COCHRANE CAN NEITHER OBTAIN THE BASE DOCUMENTS FROM THE AD-** 7 **VERSE PARTIES NOR CONDUCT NECESSARY DEPOSITIONS OF TRIBAL REPRESENTA-** 8 **TIVES AND OTHER THIRD PARTIES DURING THE REMAINDER OF THE DISCOVERY** 9 **PERIOD**

10 **A. Late-Breaking Developments**

11 During the preparation of this motion, the Governor of the State of California Gavin
 12 Newsom issued Executive Order N-33-20, which directs “all individuals living in the
 13 State of California to stay home or at their place of residence” with but few exceptions.
 14 *See* Executive Order N-33-20, *available at* <https://covid19.ca.gov/img/N-33-20.pdf> (last
 15 visited March 19, 2020). This “shelter in place” order goes into effect the day after this
 16 filing and does not contain an end date. With Governor Newsome making statements to
 17 the effect that he predicts that **more than half** of Californians will be infected with
 18 COVID-19 within the next eight weeks, a reasonable person can and should assume that
 19 this order or others like it will continue in effect for the foreseeable future. *See* KRON4,
 20 *Gov. Newsom issues state-wide order for Californians to shelter in place to slow the*
 21 *spread of coronavirus* (Mar. 19, 2020), *available at* [https://www.kron4.com/news/](https://www.kron4.com/news/california/gov-newsom-issues-state-wide-order-for-californians-to-shelter-in-place-to-slow-spread-of-coronavirus/)
 22 [california/gov-newsom-issues-state-wide-order-for-californians-to-shelter-in-place-to-](https://www.kron4.com/news/california/gov-newsom-issues-state-wide-order-for-californians-to-shelter-in-place-to-slow-spread-of-coronavirus/)
 23 [slow-spread-of-coronavirus/](https://www.kron4.com/news/california/gov-newsom-issues-state-wide-order-for-californians-to-shelter-in-place-to-slow-spread-of-coronavirus/) (last visited Mar. 19, 2020). With precious little time left in
 24 discovery and still much to do (*see* §§ B & C, *infra*), the issuance of this Executive Order
 25 really does guarantee that *none* of the parties to this action will be able to conduct any
 26 meaningful discovery over the next sixty (60) days, and thus provides reason enough for
 27 the Court to grant this *ex parte* motion forthwith.

28 **B. Completing Party Discovery**

As this Court is by now well aware, Williams & Cochrane still lacks any meaningful

1 discovery from the Defendants in this action. For Quechan, its discovery production
 2 largely mirrored the appearance of the contents of its privilege log, with documents *not*
 3 produced for the periods omitted from the log and a smattering of materials turned over
 4 for the listed periods. This is a troubling reality because, as the picture below indicates
 5 (zoom in), the privilege log for Quechan begins at the end of May 2017 – or eight months
 6 *after* Williams & Cochrane’s hiring and one month before its unceremonious termination:

Williams & Cochrane LLP v. Rosette et al., 17-cv-01436
 Quechan Tribe's Privilege Log -- Withheld Documents
 March 11, 2020

#	Document Id	Family ID	Attachment	Parent	Family Date	From	Recipients	CC	Subject
1	111952	111952	111956		05/23/17	Tribal Council Secretary -tribalsecretary@quechantribe.com-	Thane D. Somerville -t.somerville@msaj.com-		
2	111956	111952		111952	05/23/17				
3	30680	30680	30681		05/24/17	Thane D. Somerville -t.somerville@msaj.com-	President Keeny Escalanti; Vice President Virgil Smith; Virgil S. Smith; Lorraine E. White; Quechan Councilman Joaquin; Marsha Hill; Willie White; Quechan Executive Secretary; Alexis Summerfield; Regina Escalanti; Council Member Aaron Brown; Kaye Nealy		Memo re Williams/Cochrane (Attorney-Client Privileged)
4	30681	30680		30680	05/24/17				
5	292005				05/31/17	Thane D. Somerville -t.somerville@msaj.com-	Willie White; President Keeny Escalanti; Vice President Virgil Smith; Virgil S. Smith; Lorraine E. White; Quechan Councilman Joaquin; Marsha Hill; Quechan Executive Secretary; Alexis Summerfield; Regina Escalanti; Council Member Aaron Brown; Virgil S. Smith		RE: ATTORNEY-CLIENT PRIVILEGE Talking Points for Meeting With W&C
6	164168				06/01/17				
								lwhite@quechantribe.com; Virgil S. Smith -vs.smith@quechantribe.com-;	

16 Compounding this issue is the giant gap in the privilege log for the three-week period im-
 17 mediately after Williams & Cochrane’s termination, a time in which there was undoubt-
 18 edly a bevy of communications between the Rosette Defendants and Quechan about
 19 winding up the compact negotiations that, for whatever reason, did not merit inclusion in
 20 the log:

61	133237	133237	133239		06/28/17	Willie White -w.white@quechantribe.com-	Robert Rosette -rosette@rosettelaw.com-; Quechan Executive Secretary -executivesecretary@quechantribe.com-	Quechan Executive Secretary -executivesecretary@quechantribe.com-	W&C Email June 15th 2017 (attached)
62	133239	133237		133237	06/28/17				
63	136756	136756	136759		06/30/17	Robert Rosette -rosette@rosettelaw.com-	Quechan Executive Secretary		Letter to Cochrane & Williams
64	136759	136756		136756	06/30/17				
65	115172	115172	115175		07/20/17	Christian Cienfuegos -ccienfuegos@rosettelaw.com-	Tribal Council Secretary; Leigh Wink -lwink@rosettelaw.com-	Leigh Wink -lwink@rosettelaw.com-	RE: summary
66	115175	115172		115172	07/20/17				
67	33002	33002	33003		07/20/17	Robert Rosette -rosette@rosettelaw.com-	Quechan Executive Secretary; Quechan Vice President Smith; Lorraine E. White; Quechan Councilman Joaquin; Councilman Brown; Marsha Hill; Willie White; Katelin Anderbery -kanderbery@rosettelaw.com-; Jonathon Sanchez -jsanchez@rosettelaw.com-; Saba Bazzazieh -sbazzazieh@rosettelaw.com-; Jay Weiner -jweiner@rosettelaw.com-	Saba Bazzazieh -sbazzazieh@rosettelaw.com-; Jay Weiner -jweiner@rosettelaw.com-	Legal Update As Requested by Tribal Council
68	33003	33002		33002	07/20/17				
							Quechan Executive Secretary; Quechan Vice President Smith; Lorraine E. White; Quechan		

28 Williams & Cochrane has propounded follow-up discovery on Quechan in the hopes of

1 obtaining answers regarding the whereabouts of its basic documents, and this Court ob-
 2 viously has in its possession the joint motion related to the propriety of Quechan with-
 3 holding the select documents listed on its log on the basis of one form of privilege or a-
 4 nother. *See* Dkt. No. 271.

5 For the Rosette Defendants, the situation is just as (if not more) bleak, with the firm
 6 producing next to nothing in response to Williams & Cochrane’s request for productions
 7 (as shown by its initial production of 211 pages), claiming to have a treasure trove of
 8 documents related to Cheryl Williams/Kevin Cochrane/Williams & Cochrane from the
 9 time period of 2010 to 2017 that inconceivably escaped the “bad faith” filter of this
 10 Court’s February 4, 2020 order, and then listing anything and everything related to the
 11 situation at Quechan on *a ninety-eight page privilege log*, as the final (and nicely re-
 12 dacted) page below indicates:

ROSETTE DEFENDANTS' PRIVILEGE LOG
 WILLIAMS AND COCHRANE, LLP, ET AL., V. QUECHAN TRIBE OF THE FORT YUMA INDIAN R

BEGINNING BATES	END BATES	DATE	FROM/AUTHOR	TO	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

ATTORNEYS' EYES ONLY

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1 Presently, this Court has before it joint motions with respect to both the Rosette Defend-
2 ants' privilege log *and* its failure to turn over any documents in response to this Court's
3 order requiring production of the bad faith materials. Rulings on all the above disputes
4 are needed before any official cut off for the service of party-based discovery so Williams
5 & Cochrane can review whatever documents the Defendants ultimately decide to produce
6 and then send out consequent requests for production to cure the inevitable deficien-
7 cies/inconsistencies. But, not only that, these rulings also need to come out before Wil-
8 liams & Cochrane deposes the involved officials from Quechan, who otherwise will sim-
9 ply be coached up to say self-serving something or others in a virtual evidentiary vac-
10 uum.

11 But, even if these rulings came out tomorrow and the subject documents produced
12 forthwith, a discovery stay is still warranted due to the difficulties caused by COVID-19.
13 Virtually all of the party representatives that Williams & Cochrane needs to depose are of
14 Native American descent, and the Indian Health Service has long published data indicat-
15 ing that individuals of this ancestry have elevated mortality rates from viruses and lower
16 respiratory infections, as the table below indicates:

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22 **[CONTINUED ON NEXT PAGE]**
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MORTALITY DISPARITY RATES

American Indians and Alaska Natives (AI/AN) in the IHS Service Area

2009-2011 and U.S. All Races 2010

(Age-adjusted mortality rates per 100,000 population)

	AI/AN Rate 2009-2011	U.S. All Races Rate - 2010	Ratio: AI/AN to U.S. All Races
ALL CAUSES	999.1	747.0	1.3
Diseases of the heart (Heart Disease)	194.7	179.1	1.1
Malignant neoplasm (cancer)	178.4	172.8	1.0
Accidents (unintentional injuries)*	93.7	38.0	2.5
Diabetes mellitus (diabetes)	66.0	20.8	3.2
Alcohol-induced	50.0	7.6	6.6
Chronic lower respiratory diseases	46.6	42.2	1.1
Cerebrovascular diseases (stroke)	43.6	39.1	1.1
Chronic liver disease and cirrhosis	42.9	9.4	4.6
Influenza and pneumonia	26.6	15.1	1.8
Drug-induced	23.4	15.3	1.5
Nephritis, nephrotic syndrome (kidney disease)	22.4	15.3	1.5
Intentional self-harm (suicide)	20.4	12.1	1.7
Alzheimer's disease	18.3	25.1	0.7
Septicemia	17.3	10.6	1.6
Assault (homicide)	11.4	5.4	2.1
Essential hypertension diseases	9.0	8.0	1.1

* Unintentional injuries include motor vehicle crashes.

1 See U.S. Department of Health and Human Services – Indian Health Service, *Disparities*
2 – *mortality Disparity Rates*, available at [https://www.ihs.gov/newsroom/factsheets/](https://www.ihs.gov/newsroom/factsheets/disparities/)
3 [disparities/](https://www.ihs.gov/newsroom/factsheets/disparities/) (last visited Mar. 19, 2020). Put in simple terms, Native Americans are thus at
4 a statistically elevated risk for COVID-19 complications vis-à-vis the general population.
5 Thus, no counsel in this case can truly in good conscience condone conducting live depo-
6 sitions of persons of this background given the upward trajectory of COVID-19 and its
7 full and potentially-devastating effects on Native Americans still unknown.

8 Not to mention, this disease has brought with it financial ramifications for Native
9 American tribes that were completely unforeseen just a couple of weeks ago. On or about
10 March 15, 2020, Governor Newsom held a press conference in which he ordered all bars,
11 wineries, nightclubs, and brewpubs in the State to close, and also advised residents to
12 limit gatherings in public places. See, e.g., Jill Cowan, *California Governor Orders*
13 *Radical Changes to Daily Life*, N.Y. Times, Mar. 16, 2020, available at
14 <https://www.nytimes.com/2020/03/16/us/california-newsom-bars-home-isolation.html>
15 (last visited Mar. 19, 2020). Though they did not have to, most responsible Indian tribes
16 in the State of California shuttered their casino in the days thereafter, including the vast
17 majority of those in Southern California. See, e.g., *Which Southern California casinos*
18 *are open and closed amid coronavirus pandemic*, The Press-Enterprise, Mar. 17, 2020,
19 available at [https://www.pe.com/2020/03/17/which-southern-california-casinos-are-](https://www.pe.com/2020/03/17/which-southern-california-casinos-are-open-and-closed-amid-coronavirus-pandemic/)
20 [open-and-closed-amid-coronavirus-pandemic/](https://www.pe.com/2020/03/17/which-southern-california-casinos-are-open-and-closed-amid-coronavirus-pandemic/)(last visited Mar. 19, 2020). This sudden
21 and sweeping action presumably has ramifications for all of the stakeholders in this suit.
22 For Williams & Cochrane, the Firm has to adjust its operations to focus its attention on
23 the immediate needs of tribal clients who are trying to navigate the new old world of little
24 revenues and even less outside support. For Quechan, if it has not closed the doors to its
25 casino, it surely is on the brink of doing so. Thus, its attention at this point should be on
26 meeting the needs of its community rather than writing monthly checks to WilmerHale in
27 the amount of \$138,041.57 or more.

28 ///

C. Conducting Third Party Discovery

The prospect of obtaining discovery from unwilling third-parties in the midst of a global pandemic is even more daunting. As mentioned, counsel for Quechan did not turn over any meaningful documents on behalf of its client and then blocked numerous subpoenas that were sent to representatives of the Tribe for materials in their personal possessions. This course of action has necessitated turning outside of Quechan for relevant materials, part of which involved serving subpoenas on the various State of California entities involved in the Quechan compact negotiations. One such entity is the Office of Senator Ben Hueso (i.e., the sponsor of the bill to ratify Quechan's compact), which recently informed Williams & Cochrane that it intends to comply with the subpoena but that it will not even be able to begin doing so until at least mid-April at the earliest, the anticipated date on which some portion of the Senator's administrative staff *may* finally return to the office. *See Williams Decl.*, ¶ 6. And, notably, this response is for a subpoena issued at the beginning of March 2020. Imagine the responses that newly-issued subpoenas are likely to elicit (or not elicit) now, with the doors of many businesses and governmental buildings closed to the public, individuals largely working from home, and people's attentions focused upon base needs rather than some unnecessary dispute involving an Indian tribe that does not like to pay its bills (WilmerHale excluded).

And this is just the problem with serving *document subpoenas*,¹ not getting people to actually show up for in-person depositions.² As to that, the Defendants are emphatic about conducting discovery by hiding all of the relevant evidence and then scheduling as many depositions as possible before any of that evidence is revealed so they can elicit the answers they want. The Defendants first tried to do this with former Quechan President Keeny Escalanti (i.e., a person for whom not a single document has been produced aside

¹ Which assumes Williams & Cochrane can find process servers willing to serve such subpoenas, and is okay with potentially exacerbating a public health crisis.

² Which, at present, requires all involved – including the witness in most cases – to flout Governor Newsome's shelter in place order

1 from the letter terminating Williams & Cochrane), then feigned to move on to other tribal
2 members, have now set their sights on Cheryl Williams and Kevin Cochrane,³ and have
3 also noticed depositions for representatives from the State of California who were in-
4 volved in the compact negotiations. As for Mr. Cochrane and Ms. Williams, counsel for
5 the Rosette Defendants is trying to lure them to some unspecified location at the earliest
6 possible date (and before they have any meaningful evidence from the other parties) to
7 put them in confined spaces for prolonged periods of time with attorneys who work and
8 reside in hubs of COVID-19 activity. The State depositions are just if not more so con-
9 cerning: one of the attorney generals for the State that Quechan wants to depose is some-
10 one who, on information and belief, suffered a major malady in recent years that greatly
11 impacted his or her physical and mental wellbeing. Counsel for Quechan may feel com-
12 fortable deposing him or her at the present time; counsel for Williams & Cochrane cannot
13 say the same. This is especially true since Ms. Williams – who is of Native descent – is
14 currently ill with respiratory symptoms, is unable to get tested for COVID-19, and is in
15 self-quarantine per doctor’s orders. *See Williams Decl.*, ¶ 7. No legitimate justification
16 exists for barreling ahead with depositions now rather than staying discovery for sixty
17 (60) days so pandemics can pass and parties can produce. Once this happens, the Court
18 can hopefully get discovery back on track in this case with whatever time remains (or by
19 continuing the existing deadlines to allow Williams & Cochrane to get (and use) the
20 materials the Defendants have long withheld). A solution like this may not be beautiful
21 inside and out, but it is the only reasonable and responsible reaction to the present state of
22 affairs.

23
24 ³ Counsel for the Rosette Defendants communicated her intent today to file a joint mo-
25 tion with the Court next week to, apparently, compel depositions for Cheryl Williams and
26 Kevin Cochrane on an imminent basis for unspecified reasons while also requesting ter-
27 minating sanctions for non-compliance. *See Williams Decl.*, ¶ 5. In other words, the im-
28 pending joint motion presents the dilemma of either potentially catching a communi-
cable disease (and potentially violating State law) or facing terminating sanctions. What a
lovely “choice.”

1 **CONCLUSION**

2 For the foregoing reasons, Williams & Cochrane respectfully requests the Court to
3 stay discovery for sixty (60) days and set up a status conference seven (7) days before the
4 end of that period to discuss impending issues and/or whether a continuation of the stay is
5 warranted.

6 RESPECTFULLY SUBMITTED this 19th day of March, 2020

7
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