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Quechan Tribe of the Fort Yuma Indian  
9 Reservation

10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 WILLIAMS & COCHRANE, LLP,

13 Plaintiff,

14 v.

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

19 Defendants.

20 QUECHAN TRIBE OF THE FORT  
21 YUMA INDIAN RESERVATION, *a*  
22 *federally-recognized Indian tribe,*

23 Counterclaim-Plaintiff,

24 v.

25 WILLIAMS & COCHRANE, LLP,

26 Counterclaim-Defendant.  
27

Case No.: 17-cv-01436-GPC-MDD

**THE QUECHAN TRIBE'S  
PARTIAL OPPOSITION TO  
WILLIAMS & COCHRANE'S EX  
PARTE MOTION TO STAY  
DISCOVERY (ECF NO. 275)**

Judge: Hon. Gonzalo P. Curiel  
Courtroom: 2D  
Trial Date: Not Set

1           The Quechan Tribe (the “Tribe”) and its counsel appreciate, and have been  
2 affected by, the profound consequences of the Coronavirus/COVID-19 pandemic.  
3 By filing this partial opposition to W&C’s *ex parte* motion for an order staying  
4 discovery for at least 60 days (ECF No. 275) (the “Motion”), the Tribe in no way  
5 intends to minimize the impact of the pandemic on the parties, the Court, and the  
6 communities in which we all live. Indeed, extensions of time to respond to discovery  
7 and complete depositions may be warranted. But a sixty-day stay of discovery across  
8 the board—one about which W&C did not meet and confer with counsel for the Tribe  
9 prior to filing the Motion—without commitment from W&C regarding dates for their  
10 depositions is problematic given the course of discovery to date. The Tribe instead  
11 suggests an approach that is more narrowly tailored and flexible than a blanket two  
12 month stay, including the setting of a status conference on or about April 17 to assess  
13 the necessity and potential length of an extension to the fact discovery deadline.

14           In addition, the Tribe felt compelled to file a response to the Motion, in part,  
15 because the Motion is filled with the same types of misrepresentations and invective  
16 that have unfortunately become commonplace for W&C’s written filings in this  
17 action. W&C’s conjured discovery complaints are not only baseless, they are  
18 irrelevant to what should have been a straightforward request for additional time due  
19 to current events affecting us all. Accordingly, this Response will not engage in a  
20 point-by-point refutation of W&C’s mischaracterizations other than to note that  
21 W&C’s clear frustration at not having evidence to support its claims and defenses is  
22 not due to any improper interference or intransigence by the Tribe; rather, it is a  
23 reflection of the lack of merit to W&C’s claims, and the strength of the Tribe’s  
24 Counterclaims. The Tribe is eager to complete fact discovery at the earliest  
25 opportunity and prepare for trial. Accordingly, the Tribe responds to the Motion and  
26 proposes alternative scheduling accommodations.

1 **I. W&C’S EX PARTE MOTION IS PROCEDURALLY IMPROPER**

2 Local Rule 83.3(g) requires a moving party to give the opposing party  
3 reasonable notice before filing an *ex parte* motion. And this Court’s Standing Order  
4 similarly permits *ex parte* motion practice only where “the opposing party refuses to  
5 participate in contributing to a joint motion after a reasonable opportunity has been  
6 provided . . . .” Civ. Chambers R. § IV.F (emphasis added). W&C violated Local  
7 Rule 83.3(g) and the Court’s Standing Order by failing meaningfully to meet and  
8 confer prior to filing the Motion. W&C’s assertions to the contrary, *see* ECF No. 275  
9 at 1-2, are untrue.

10 W&C raised the prospect of extending the May 22, 2020 fact-discovery  
11 deadline during a March 11, 2020 telephonic meet and confer that was requested by  
12 the Rosette Defendants for the purposes of scheduling the individual depositions of  
13 Cheryl Williams and Kevin Cochrane. *See* Vittor Decl. ¶¶ 2-4. The topic was  
14 discussed in passing, and in general; W&C neither specified the scope nor duration of  
15 a potential extension of the discovery period. *See id.* ¶ 6. For W&C to suggest now  
16 that counsel meaningfully met and conferred on March 11 about the issues raised in  
17 the Motion is disingenuous, and defeats the purpose of the meet and confer  
18 requirement. *See, e.g., Eusse v. Vitela*, 2015 WL 9008634, at \*3 (S.D. Cal. Dec. 14,  
19 2015) (explaining the “obvious purpose of the meet and confer requirement is to  
20 ensure the parties engage in a good faith, meaningful dialogue” to resolve “particular  
21 disputes.”).

22 W&C first informed the Tribe of its intention to file the Motion via email on  
23 March 19, 2020, less than twelve hours before the Motion was ultimately filed. *See*  
24 Vittor Decl. ¶¶ 9, 14. Counsel for the Tribe responded to W&C’s email in less than  
25 90 minutes, proposing to meet and confer about W&C’s proposal the following day,  
26 March 20. *See id.* ¶ 10. Counsel for the Rosette Defendants responded less than 30  
27 minutes thereafter, agreeing to meet and confer on March 20. *See id.* ¶ 11.  
28

1 W&C never wrote back. Rather than respond to these requests to meet and  
 2 confer, W&C filed the Motion at approximately 10:03 PM on March 19, 2020. *See*  
 3 Vittor Decl. ¶ 13. W&C’s efforts to meet and confer with respect to this Motion do  
 4 not satisfy the meet and confer requirement. *See* L.R. 26.1 (“Under no circumstances  
 5 may the parties satisfy the meet and confer requirement by exchanging written  
 6 correspondence.”); *Access Biomedical Diagnostic Labs, Inc. v. Am. States Ins.*, 2006  
 7 WL 8455247, at \*1 (S.D. Cal. Jan. 9, 2006) (requiring live discussion among counsel  
 8 to satisfy the meet and confer requirement). Rather than meet and confer and attempt  
 9 to find a mutually-agreeable approach, W&C chose instead to file a Motion that in  
 10 large part appears to have been designed to cast baseless aspersions at the  
 11 Defendants. Consequently, the Motion should be denied.

12 **II. THE W&C PROPOSED STAY AND THE REASONABLE**  
 13 **ALTERNATIVE PROPOSAL**

14 The Tribe reiterates its appreciation and concern for the challenges caused by  
 15 the COVID-19 pandemic, and acknowledges that the current circumstances may  
 16 make it difficult to complete the discovery process by the May 22 discovery cut-off.  
 17 These challenges include, most obviously, conducting in-person depositions. But, at  
 18 least at this time, a blanket 60-day stay is unwarranted. Consistent with the Court’s  
 19 discretion and inherent power to make appropriate case management rulings, the  
 20 Court should fashion appropriate relief consistent with the status of the case and  
 21 remaining deadlines. *See In the Matter of Suspension of Jury Trials and Other*  
 22 *Proceedings During the COVID-19 Public Emergency*, Order of the Chief Judge No.  
 23 18 (March 17, 2020) ¶ 4. Accordingly, the Tribe believes the more limited relief  
 24 described below is sufficient and appropriate here.

25 **A. Written Discovery**

26 Pursuant to the operative scheduling order, which was issued on October 9,  
 27 2019, “[a]ll interrogatories, requests for admission, and document production  
 28 requests must be served by March 20, 2020.” ECF No. 232 ¶ 3. Consistent with that

1 deadline, the Tribe and W&C served robust sets of written discovery on the evening  
2 of March 20. Any stay or extension of discovery therefore will not affect the ability  
3 of the parties to serve additional written discovery, because that deadline has already  
4 passed.<sup>1</sup> However, in order to provide additional time for the parties to respond to  
5 recently-served written discovery while simultaneously reacting and adapting to the  
6 pandemic and its attendant challenges, the Tribe proposes a 30-day extension on  
7 deadlines for responses to all Interrogatories, Requests for Production, and Requests  
8 for Admission served in March 2020.

### 9 **B. Depositions**

10 Given recent orders by State and local officials, the Tribe recognizes that in-  
11 person depositions will not be possible until after April 19, at the earliest. However,  
12 to date, Ms. Williams and Mr. Cochrane have refused to sit for their depositions at  
13 any point in the near future, offering spurious excuses for why they should not be  
14 deposed. During the March 11, 2020 meet and confer between the parties, Ms.  
15 Williams and Mr. Cochrane even took the position that they would not sit for their  
16 own depositions unless counsel for the Rosette Defendants agreed, in writing, to limit  
17 the manner in which the deposition transcripts would be used—explicitly arguing that  
18 the deposition transcripts should not be able to be used in future sanctions motions  
19 against them. *See* Vittor Decl. ¶¶ 4-5. This position is outrageous, and leaves the  
20 Tribe reasonably concerned about Mr. Cochrane’s and Ms. Williams’s future  
21 willingness to schedule their depositions, regardless of whether or not discovery is  
22 stayed.

23 W&C has also resisted scheduling depositions for other witnesses in the case,  
24 which is why no depositions have occurred to date. The Motion itself makes this

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25 <sup>1</sup> The Motion does not appear to seek the extension of the March 20 written  
26 discovery deadline. But even if it did, the last day for moving to extend that deadline  
27 was March 13. *See* Civ. Chambers R. § V. As a result, the Motion would be  
28 untimely with respect to an extension of the written discovery deadline, which has  
now already passed in any event.

1 clear. After acknowledging its resistance to proceeding with former President  
2 Escalanti’s deposition—which the Rosette Defendants originally noticed for February  
3 2020—W&C makes a cryptic argument for delaying a deposition (noticed by the  
4 Tribe) of one of the State’s negotiators of the gaming compact at issue, claiming that  
5 the witness “suffered a major malady in recent years that greatly impacted his or her  
6 physical and mental wellbeing.” ECF No. 275 at 9-10. This strange and personal  
7 attack on the “physical and mental” health of a potential third party witness has no  
8 place in a public filing, especially in the current climate.

9 The Tribe therefore agrees to pause depositions in the case to a time when in-  
10 person depositions are safer and more feasible than they are at present—to at least  
11 after April 19—but seeks assurances that Ms. Williams and Mr. Cochrane will  
12 promptly commit to deposition dates for their depositions, and will not obstruct the  
13 four depositions already noticed by the Tribe. With these conditions, the Tribe is not  
14 opposed to a limited extension of time to complete depositions beyond the current  
15 May 22, 2020 fact discovery deadline, the exact length of which can be determined  
16 by the Court.

### 17 **C. Status Conference**

18 The Tribe proposes that the Court convene a status conference regarding the  
19 status of discovery, the length of the extension of the fact discovery deadline required  
20 to complete depositions, and the resulting impact on the schedule for expert  
21 discovery and other deadlines in the case. The Tribe further proposes that the status  
22 conference occur on April 17 or as shortly thereafter as the Court can accommodate.  
23 A status conference on April 17 should provide the parties sufficient additional time  
24 to prepare responses to pending written discovery and schedule depositions. If for  
25 whatever reason—including of course for reasons related to Coronavirus/COVID-  
26 19—additional time is warranted for the scheduling of depositions, the parties and  
27 Court can address it during the status conference.

1 Dated: March 23, 2020

Respectfully submitted,

2 /s/ Joshua A. Vittor

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 23, 2020, I electronically filed the foregoing with the clerk of the court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 23, 2020 at Los Angeles, California.

/s/ Joshua A. Vittor  
Joshua A. Vittor