

1 MATTHEW W. CLOSE (S.B. #188570)
 mclose@omm.com
 2 BRITTANY ROGERS (S.B. #274432)
 brogers@omm.com
 3 KATE M. IKEHARA (S.B. #313431)
 kikehara@omm.com
 4 O'MELVENY & MYERS LLP
 400 South Hope Street
 5 Los Angeles, California 90071-2899
 Telephone: (213) 430-6000
 6 Facsimile: (213) 430-6407

7 Attorneys for Defendants Robert Rosette,
 Rosette & Associates, PC, and Rosette, LLP
 8

9
 10 **UNITED STATES DISTRICT COURT**
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 WILLIAMS & COCHRANE, LLP,

13 Plaintiff,

14 v.

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

19 Defendants.

Case No. 17-CV-01436 GPC MSB

**ROSETTE DEFENDANTS'
 OPPOSITION TO PLAINTIFF'S
 EX PARTE MOTION TO STAY
 DISCOVERY FOR SIXTY DAYS**

Judge: Hon. Michael S. Berg
 Courtroom: 2C

20
 21
 22
 23
 24
 25
 26
 27
 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
I. Introduction	1
II. Argument.....	2
A. Emergency <i>Ex Parte</i> Relief Is Unwarranted.....	2
B. A Complete Discovery Stay Is Unnecessary	4
III. Conclusion.....	5

1 **I. Introduction**

2 The Rosette Defendants are sensitive to the new realities facing the world
3 and the growing challenges presented by the novel coronavirus pandemic. A
4 worldwide public health crisis affects everyone, including the judiciary and
5 litigants. Reasonable accommodations and cooperation are important, but unless
6 the federal court system shuts down, litigants and lawyers have an obligation to
7 carry on—especially the plaintiffs who initiated civil lawsuits.

8 W&C should not have brought an emergency, *ex parte* motion, and the relief
9 it seeks is indefensible. This case was filed in 2017 and discovery has been
10 ongoing since October. There are no imminent deadlines or deposition dates, and
11 two months remain to complete fact discovery. And the parties to this case are not
12 uniquely affected by the pandemic. Every bench officer, member of chambers’
13 staff, litigant, and witness in every case faces significant uncertainty. W&C has no
14 right to jump to the front of the motion practice line, particularly in light of the
15 extreme burdens that this crisis is putting on the judiciary. The fact that Mr.
16 Cochrane believes the world is ending and does not “feel fine spending the final
17 days talking about Robert Rosette rather than crossing things off [his] bucket list (in
18 isolation, of course)” is no excuse. (Dkt. No. 274-1 at 5.) Mr. Cochrane should
19 dismiss this meritless and harassing lawsuit if it is not important enough for him
20 and his partner to proceed.

21 As W&C’s recent filings have made clear, there is no evidence to support
22 W&C’s claim against the Rosette Defendants, so W&C is trying to delay the close
23 of discovery. (*See* Mot. at 9 (conceding that W&C lacks “any meaningful evidence
24 from the other parties”); *see also* Dkt. No. 274-1 at 2 (“The Firm still lacks any
25 meaningful evidence from the Rosette Defendants on the Lanham Act claim”).)
26 This case has imposed significant business and reputational costs on the Rosette
27 Defendants and they are entitled to have the case proceed toward judgment.
28 W&C’s Motion should be denied. If necessary, the parties and the Court can revisit

1 the subject in late April or early May to determine if schedule modifications are
2 appropriate.

3 **II. Argument**

4 **A. Emergency *Ex Parte* Relief Is Unwarranted**

5 “*Ex parte* motions are rarely justified,” *Mission Power Eng’g Co. v. Cont’l*
6 *Cas. Co.*, 883 F. Supp. 488, 490 (C.D. Cal. 1995), and *ex parte* relief is “reserved
7 for emergency circumstances.” *Langer v. McHale*, 2014 WL 4922351, at *2 (S.D.
8 Cal. Aug. 20, 2014) (explaining that *ex parte* motions “seek[] to bypass the regular
9 noticed motion procedure”). “To justify *ex parte* relief, the moving party must
10 generally (1) show its cause will be irreparably prejudiced if the underlying motion
11 is heard according to regular noticed motion procedures, and (2) establish it is
12 without fault in creating the crisis that requires *ex parte* relief.” *Hammes Co.*
13 *Healthcare, LLC v. Tri-City Healthcare Dist.*, 2013 WL 12064473, at *2 (S.D. Cal.
14 Nov. 20, 2013). Lack of fault in “the creation of the crisis” is critical because *ex*
15 *parte* relief is “not intended to save the day for parties who have failed to present
16 requests when they should have.” *Mission Power Eng’g*, 883 F. Supp. at 493
17 (quotation, citation omitted).

18 W&C has not shown that it will be irreparably prejudiced if its request for a
19 stay is heard on a regular, noticed motion schedule. In fact, given the Court’s joint
20 discovery dispute procedures, W&C could have sent a draft to Defendants and filed
21 this same motion within a week. W&C appears to have rushed to file *ex parte* on
22 March 19, 2020, however, because the Court-ordered deadline to serve written
23 discovery was March 20. (*See* Dkt. No 232.) That deadline has now passed. And
24 since there are no upcoming deadlines or depositions scheduled within the next
25 month, W&C can seek the same relief via a regular motion.

26 W&C also has not shown that it is without fault in creating at least some of
27 the scheduling concerns it raises. For example, W&C argues that third-party
28 subpoena recipients have been slow to respond. That is a problem of W&C’s own

1 making and is one that evidently has been developing for some time. Had W&C
2 served the subpoenas earlier, it would have had more time to negotiate and secure
3 compliance.¹ W&C has also taken the position that it cannot depose witnesses until
4 document discovery is complete, which has delayed the deposition phase of
5 discovery. Again, that was W&C's tactical decision. It cannot now complain about
6 the fact that no depositions have occurred.

7 Finally, W&C is not entitled to *ex parte* relief as a procedural matter because
8 W&C has once again failed to discharge its meet and confer obligations in violation
9 of Local Rule 26.1 ("The court will entertain no motion pursuant to Rules 26
10 through 37, Fed. R. Civ. P., unless counsel will have previously met and conferred
11 concerning all disputed issues."). W&C never met and conferred with the Rosette
12 Defendants about a discovery stay. Counsel for all parties met and conferred on a
13 different issue, the schedule for Ms. Williams' and Mr. Cochrane's depositions, on
14 Wednesday, March 11. (Rogers Decl. ¶ 4.) After refusing to schedule their
15 depositions and raising a variety of complaints about the remaining discovery to be
16 completed before the fact discovery cutoff, W&C raised the prospect of extending
17 the discovery deadline. (*Id.* ¶ 5.) W&C did not make a formal proposal or ask for a
18 stipulated stay based on public health concerns and instead asked whether the
19 parties would be open to seeking a continuance of the fact discovery deadline. (*Id.*
20 ¶¶ 5, 7.) Counsel for the Rosette Defendants explained that Magistrate Judge
21 Michael S. Berg had already admonished the parties that a continuance of the
22 discovery cutoff would not be entertained. (*Id.* ¶ 6.) Counsel for the Rosette
23 Defendants stated that they saw no need to seek a continuance of the fact discovery
24 deadline at that time. (*Id.*)²

25 ¹ The Motion refers to W&C's intention to serve additional third-party document
26 subpoenas, but the deadline for serving written requests for documents has lapsed.
(*See* Dkt. No. 232.)

27 ² W&C also belatedly raised the subject of a stay in its Joint Discovery Motion on
28 an entirely different subject: compliance with the Court's February 4, 2020 Order.
(*See* Dkt. No. 274 at 3.)

1 When W&C finally told Defendants that it planned to request a discovery
2 stay *ex parte*, counsel for Defendants offered to meet and confer the following day.
3 (*Id.* ¶¶ 8, 10.) One topic that required discussion was how the requested stay would
4 affect other deadlines in the Court’s Scheduling Order. Likewise, it was not clear
5 from W&C’s email whether all discovery would be suspended under W&C’s
6 proposal, including efforts to propound new discovery during the stay. W&C never
7 responded, instead filing this Motion and mischaracterizing the parties’ discussions
8 to date. (*Id.* ¶¶ 11–12.) W&C has no explanation for its failure to meet and confer
9 in good faith, and the only plausible motivation seems to be W&C’s eagerness to
10 file before the deadline to serve written discovery expired.³

11 **B. A Complete Discovery Stay Is Unnecessary**

12 Because there are no immediate deadlines and the public health situation is
13 rapidly evolving, a blanket discovery stay is unwarranted. The parties can use the
14 next few weeks to review document productions, respond to outstanding discovery
15 requests, and prepare for depositions in late April or early May. If, in a month, it
16 appears that depositions cannot go forward for public health reasons, the parties can
17 address it with the Court then. There is no need to preemptively delay the case,
18 especially when it has already been pending for almost three years.

19 Also unwarranted are W&C’s repeated and baseless accusations that counsel
20 intends to place individuals in harm’s way. (*See Mot.* at 7–9.) That is a groundless
21 and incredibly reckless accusation on par with the baseless and outrageous
22 allegations that permeate all of W&C’s pleadings. The Rosette Defendants and
23 their counsel simply want to complete discovery in compliance with the Court’s
24 orders and bring this case to a close. W&C should be admonished for asserting in a

25 _____
26 ³ W&C could not seek a continuance of the March 20, 2020 deadline to serve
27 written discovery in any event, since the Court’s Civil Chambers Rules require that
28 “any request to continue . . . [a] scheduling order deadline shall be made in writing
no less than seven (7) calendar days before the affected date.” (*See Civil Chambers
Rules at Section V.*) W&C filed its Motion on March 19, one day before the
deadline.

1 signed filing that—by seeking to depose Ms. Williams and Mr. Cochrane in the
2 ordinary course of discovery in four to six weeks—counsel for the Rosette
3 Defendants is “trying to lure them to some unspecified location at the earliest
4 possible date (and before they have any meaningful evidence from the other parties)
5 to put them in confined spaces for prolonged periods of time with attorneys who
6 work and reside in hubs of COVID-19 activity.” (Mot. at 9.) There is no basis for
7 this accusation, and W&C’s apparently mounting paranoia does not excuse its
8 unprofessional attacks on the parties and counsel.

9 **III. Conclusion**

10 The Court should see this Motion for what it is: W&C trying to delay the
11 close of discovery by exploiting a worldwide crisis. The current public health
12 situation might pose problems for completing depositions by the fact discovery
13 cutoff, but that is not a foregone conclusion—it is at least 4 to 6 weeks away. Like
14 the rest of the world, the parties should evaluate the situation as it develops, “with
15 resort to the court for judicial relief only if necessary.” San Diego County Bar
16 Association, Attorney Civility and Practice Guidelines, Section I(f). This
17 emergency *Ex Parte* Motion should be denied.

18 Dated: March 23, 2020

MATTHEW W. CLOSE
BRITTANY ROGERS
KATE M. IKEHARA
O’MELVENY & MYERS LLP

21
22 By: /s/ Brittany Rogers

23 Brittany Rogers
brogers@omm.com

24 Attorneys for Defendants Robert
25 Rosette, Rosette & Associates, PC, and
26 Rosette, LLP