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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Carol Coghlan Carter, et al.,
Plaintiffs,
v.
Kevin Washburn, et al.,
Defendants.

No. CV-15-01259-PHX-NVW

ORDER

Before the Court is Plaintiffs’ Motion for Leave to File First Amended Complaint (Doc. 150).

On July 6, 2015, Plaintiffs filed a Civil Rights Class Action Complaint for Declaratory and Injunctive Relief challenging certain provisions of the Indian Child Welfare Act, codified at 25 U.S.C. §§ 1901-1963, and Guidelines issued by the Bureau of Indian Affairs. As initially pled, Plaintiffs were two off-reservation Arizona-resident children with Indian ancestry and their off-reservation Arizona-resident foster and prospective adoptive parents involved in child custody proceedings. On October 14, 2015, Plaintiffs’ Motion for Class Certification was denied without prejudice as premature.

On December 18, 2015, during oral argument on Defendants’ motions to dismiss the Complaint, the status of adoption proceedings for the two children named as plaintiffs was discussed, and Plaintiffs’ counsel stated that Plaintiffs may amend the Complaint to add additional plaintiffs. On February 22, 2016, the Court ordered Plaintiffs to inform

1 the Court whether and when they planned to amend the Complaint and add additional
2 plaintiffs. On February 29, 2016, Plaintiffs filed a status report explaining the status of
3 adoption proceedings for the two children named as plaintiffs and Plaintiffs' intention to
4 add four new plaintiffs. On March 2, 2016, Plaintiffs moved for leave to file their First
5 Amended Complaint. On March 2, 2016, the Court issued memorandum explaining that,
6 if amendment was permitted, it would be wise to rule based on the circumstances of the
7 actual plaintiffs in the action because the motions to dismiss involved extensive briefing
8 regarding substantial issues of standing and justiciability. Subsequently, the Federal
9 Defendants and the State Defendants filed separate responses to Plaintiffs' motion to
10 amend, and Plaintiffs filed a reply in support of their motion.

11 Leave to amend should be freely given "when justice so requires." Fed. R. Civ. P.
12 15(a)(2). In deciding whether to permit amendment, courts should consider five factors:
13 bad faith, undue delay, prejudice to the opposing party, futility of amendment, and
14 whether the plaintiff has previously amended the complaint. *Johnson v. Buckley*, 356
15 F.3d 1067, 1077 (9th Cir. 2004).

16 Plaintiffs' proposed First Amended Complaint adds new plaintiffs and one claim
17 for nominal damages under Title VI of the Civil Rights Act. The legal theories under
18 which Plaintiffs seek relief in the First Amended Complaint are the same as those raised
19 in their initial Complaint. Defendants contend the amendment is futile primarily for the
20 same reasons they contend the initial Complaint is insufficient. They do not claim the
21 proposed amendment is made in bad faith or will cause undue delay or prejudice.
22 Plaintiffs have not previously amended the Complaint. Therefore, the five factors favor
23 allowing amendment, and Plaintiffs will be granted leave to amend the Complaint.

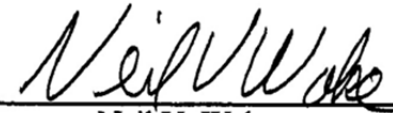
24 Because the First Amended Civil Rights Class Action Complaint for Declaratory,
25 Injunctive, and Other Relief will become Plaintiffs' operative pleading, Defendants'
26 motions to dismiss the initial Complaint technically will become moot. However, if
27 Defendants choose to file motions to dismiss the First Amended Complaint, they may,
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1 and should, incorporate by reference those portions of their previous motions that remain
2 applicable. Of course, Defendants may add anything they wish beyond incorporating
3 specific portions of their previous briefs. Unless otherwise ordered, Local Rules and the
4 Federal Rules of Civil Procedure will govern the time and length restrictions for the
5 motions briefing.

6 IT IS THEREFORE ORDERED that Plaintiffs' Motion for Leave to File First
7 Amended Complaint (Doc. 150) is granted. The Clerk will file the First Amended Civil
8 Rights Class Action Complaint for Declaratory, Injunctive, and Other Relief lodged as
9 Exhibit 1 to the Motion (Doc. 150-1).

10 IT IS FURTHER ORDERED that Federal Defendants' Motion to Dismiss (Doc.
11 68) and State Defendant's Motion to Abstain and Dismiss Pursuant to Fed. R. Civ. P.
12 12(b)(1), (6) (Doc. 70) are denied without prejudice as moot.

13 Dated this 4th day of April, 2016.

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17 Neil V. Wake
18 United States District Judge
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