

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

10 Attorneys for Defendants Robert Rosette,
11 Rosette & Associates, PC, Rosette, LLP, and
12 Richard Armstrong

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 WILLIAMS & COCHRANE, LLP; and
16 FRANCISCO AGUILAR, MILO
17 BARLEY, GLORIA COSTA, GEORGE
18 DECORSE, SALLY DECORSE, et al.,
19 on behalf of themselves and all those
20 similarly situated,

21 Plaintiffs,

22 v.

23 QUECHAN TRIBE OF THE FORT
24 YUMA INDIAN RESERVATION, a
25 federally-recognized Indian tribe;
26 ROBERT ROSETTE; ROSETTE &
27 ASSOCIATES, PC; ROSETTE, LLP;
28 RICHARD ARMSTRONG; KEENY
ESCALANTI, SR.; MARK WILLIAM
WHITE II, a/k/a WILLIE WHITE; and
DOES 1 THROUGH 10,

Defendants.

Case No. 17-CV-01436 GPC MDD

**ROSETTE DEFENDANTS'
STATEMENT OF POSITION IN
RESPONSE TO PLAINTIFF'S
MOTION FOR LEAVE TO FILE
FIRST SUPPLEMENTAL
COMPLAINT**

Judge: Hon. Gonzalo P. Curiel
Courtroom: 2D
Date: July 6, 2018
Time: 1:30 p.m.

1 **STATEMENT OF POSITION IN RESPONSE TO PLAINTIFF’S MOTION**
 2 **FOR LEAVE TO FILE FIRST SUPPLEMENTAL COMPLAINT**

3 On June 7, 2018, the Court dismissed the majority of Williams & Cochrane’s
 4 (“W&C”) claims against all defendants, including all of its RICO claims. (Docket
 5 No. 89.) While the Court’s Order deferred the filing of a Second Amended
 6 Complaint (“SAC”), if any, until it hears argument on W&C’s pending Motion for
 7 Leave to File First Supplemental Complaint (the “Motion”) (*id.* at 39), the Motion
 8 is now moot. (Docket No. 71.) W&C seeks to add supplemental general
 9 allegations (Docket No. 71-1 at 11) and specific allegations to its RICO claims (*id.*
 10 at 13) based on activities connected to this litigation. At present, however, there is
 11 no RICO claim to supplement, and the Court has given Plaintiff an opportunity to
 12 file a new pleading. A supplemental pleading is not only unnecessary under these
 13 circumstances; it is moot. *See Patten v. Brown*, 2012 WL 1669350, at *8 (N.D.
 14 Cal. May 11, 2012) (“In light of the dismissal of Plaintiff’s amended complaint
 15 with leave to amend, Plaintiff’s motion to supplement that amended complaint is
 16 DENIED as moot.”); *Wagner Equip. Co. v. Wood*, 289 F.R.D. 347, 351 (D.N.M.
 17 2013) (same); *cf. Keith v. Volpe*, 858 F.2d 467, 474 (9th Cir. 1988) (“[T]he court
 18 may . . . permit a party to serve a supplemental pleading setting out any transaction,
 19 occurrence, or event that happened after the date of the pleading to be
 20 supplemented”). W&C can simply include its supplemental allegations in the
 21 forthcoming SAC, if it believes those allegations are consistent with Rule 11 and
 22 the Court’s Order.¹

23 ¹ The Court has already admonished W&C that the First Amended Complaint
 24 “contain[ed] pages-long discussions of topics wholly irrelevant to the claims in this
 25 case” and warned that if the SAC “fails to adhere to Rule 8(a)’s requirements, the
 26 Court will consider dismissing the complaint *sua sponte*.” (Docket No. 89 at 2, n.1.)
 27 The allegations contained in the proposed First Supplemental Complaint fall
 28 directly into this category, and they should not be included in any pleading. That
 an attorney at Rosette, LLP, inadvertently disclosed an unredacted copy of the
 amended complaint has no conceivable connection to W&C’s RICO allegations.
 As soon as Rosette, LLP learned that there may have been a disclosure, it
 investigated, took steps to request the destruction of unintentionally disclosed
 material, and notified the Court. (Docket Nos. 81, 81-1.) As the sworn declaration

1 After the Court entered its Order dismissing the RICO claims, counsel for
2 Defendants proposed to stipulate that W&C could include the supplemental
3 complaint allegations in the forthcoming SAC, without waiving any rights to
4 challenge those allegations once a SAC is filed. (*See* Ex. 1 to Declaration of
5 Matthew W. Close at 2–3.) Defense counsel explained that, given the dismissal
6 Order, such a stipulation would streamline the litigation and save the Court and
7 parties from further work on the Motion. (*See id.*) W&C declined to discuss the
8 terms of such a stipulation, despite the fact that it would provide W&C with the
9 relief it is seeking by the Motion. (*See id.* at 2.) This appears to be another effort to
10 delay the prompt resolution of this case.

11 Defendants want to move the case along. The Rosette Defendants request
12 that the Court promptly enter an Order providing that:

- 13 1. Plaintiffs shall file their SAC by June 29, 2018.
- 14 2. Defendants shall respond to the SAC by July 20, 2018.
- 15 3. Plaintiffs can include in their SAC the allegations in their proposed
16 supplemental complaint if they choose to do so.
- 17 4. Defendants preserve all of their rights to challenge the SAC.
- 18 5. The Motion (Docket No. 71) is taken off calendar.

19 There is no need for a supplemental complaint at this point, when the claims
20 W&C seeks to bolster have been dismissed and the Court has granted leave to file a
21 SAC. Supplemental complaints are intended to allow parties to add allegations to a
22 pleading that is already at-issue, which is not the case here. This case should move
23 ahead. Plaintiffs should file an operative pleading forthwith.

24
25
26
27 _____
28 submitted with Rosette, LLP’s notice avers, the disclosure of an unredacted copy of
the FAC was an accident. (*Id.*)

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

Dated: June 15, 2018

MATTHEW W. CLOSE
BRITTANY ROGERS
O'MELVENY & MYERS LLP

By: s/ Matthew W. Close
Matthew W. Close

Attorneys for Defendants Robert
Rosette, Rosette & Associates, PC,
Rosette, LLP, and Richard Armstrong
Email: mclose@omm.com