Cheryl A. Williams (Cal. Bar No. 193532)
Kevin M. Cochrane (Cal. Bar No. 255266)
caw@williamscochrane.com
kmc@williamscochrane.com
WILLIAMS & COCHRANE, LLP
525 B Street, Suite 1500
San Diego, CA 92101
Telephone: (619) 793-4809

Attorneys for Plaintiff
WILLIAMS & COCHRANE, LLP, *et al.*

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

WILLIAMS & COCHRANE, LLP; *and* **FRANCISCO AGUILAR**, **MILO BARLEY**, **GLORIA COSTA**, **GEORGE DECORSE**, **SALLY DECORSE**, *et al., on behalf of themselves and all those similarly situated*;

(All 28 Individuals Listed in ¶ 13)

Plaintiff,

vs.

QUECHAN TRIBE OF THE FORT YUMA INDIAN RESERVATION, *a federally-recognized Indian tribe*; **ROBERT ROSETTE**; **ROSETTE & ASSOCIATES, PC**; **ROSETTE, LLP**; **RICHARD ARMSTRONG**; **KEENY ESCALANTI, SR.**; **MARK WILLIAM WHITE II**, *a/k/a WILLIE WHITE*; *and* **DOES 1 THROUGH 100**;

Defendants.

Case No.: 17-CV-01436 GPC MDD

WILLIAMS & COCHRANE'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE FIRST SUPPLEMENTAL COMPLAINT [DKT. NO. 71]

Date: July 6, 2018
Time: 1:30 p.m.
Dept: 2D
Judge: The Honorable Gonzalo P. Curiel

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

INTRODUCTION

In the aftermath of filing a motion for leave to file a first supplemental complaint, the Rosette defendants were rather vehement about their intent to oppose the motion, explaining they would "oppose… on the briefing schedule set by the Court" and therein "respond substantively to Plaintiff's" proposed allegations that "are both inaccurate and unfounded." *See* Dkt. No. 81, 5:23-28. This posture changed dramatically in the days leading up to the filing deadline, though, with the Rosette defendants offering to stipulate to the filing of a Second Amended Complaint *so long as* Williams & Cochrane ("Firm") filed the pleading on an unreasonably short schedule[1] and did so with an understanding that the Rosette defendants would likely move for sanctions under Rule 11 if the Firm included *any* of the allegations "contained in the proposed First Supplemental Complaint… [that allegedly] should not be included in any pleading." *See* Dkt. Nos. 91, 2:25-26; 91-1, p. 5. The decision by Williams & Cochrane to decline this proposed stipulation was not "another effort to delay the prompt resolution of this case," but simply a necessary response to an unhelpful proposal that tried to replace constructive direction from the Court with forced compulsion by the opposing party. The need for the Court to do more in setting the table for the filing of the Second Amended Complaint than what the Rosette defendants proposed becomes patently evident after considering the factual matter that underlies this situation.

I. BACKGROUND

The thrust of the response by the Rosette defendants is, again, that the "allegations contained in the First Supplemental Complaint… should not be included in any plead-

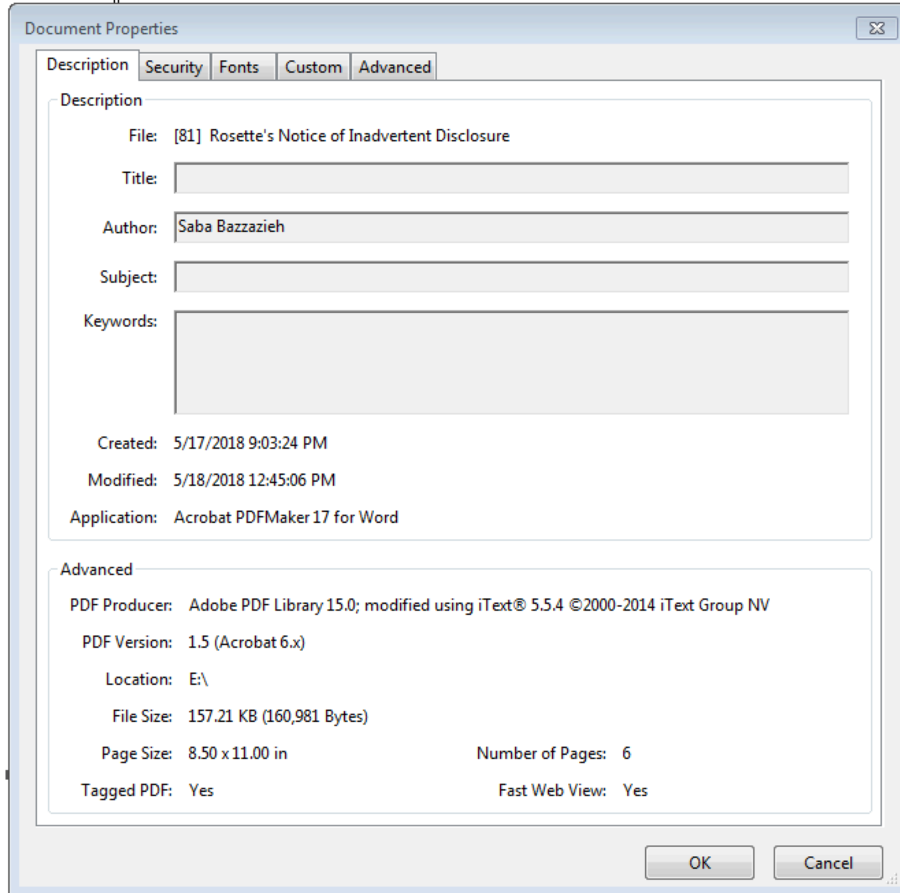
[1] As to that, the proposed stipulation would have allotted Williams & Cochrane two weeks in which to draft a "short and plain" pleading that nevertheless "respond[ed] to the deficiencies discussed in" the June 7, 2018 order *and* incorporated the gravamen of the First Supplemental Complaint while giving the opposing parties more time – three weeks instead of the standard two – to file the next round of Rule 12 motions. *See* FED. R. CIV. P. 15(a)(3) (explaining a response to an amended pleading must be made at the latest "within 14 days after service of the amended pleading").

ing." Dkt. No. 91, 2:25-26. Consider for a moment, though, these allegations in the context of the bigger picture that's been painted thus far. The First Amended Complaint sets forth a long pattern of Rosette interference with Williams & Cochrane's contract with the Pauma tribe, a series of events that ultimately pauses at the inception of the present suit with the allegation that Mr. Rosette was "attempting to sneak back into Pauma without either the Tribal Council or the General Council's consent or even awareness by surreptitiously working for the new general manager of the tribe's subordinate gaming facility (*i.e.*, Michael Olujic) with whom Mr. Rosette has a preexisting relationship." Dkt. No. 39, ¶ 184. This relationship has now been established as fact, as an un-redacted copy of the First Amended Complaint that was e-mailed from counsel for Williams & Cochrane to opposing counsel in connection with the filing of the document went from O'Melveny & Myers, to Rosette, LPP, to Mr. Olujic as part of an admitted effort to "*advis[e]*[2] [this] third party about… allegations in the FAC concerning the third party." Dkt. No. 81, 6:1-3.

The submission of the motion for leave to file a first supplemental complaint led a Rosette, LLP attorney by the name of Saba Bazzazieh to prepare a declaration explaining that she "had inadvertently sent the un-redacted version of the FAC to Mr. Olujic," who nevertheless acknowledged that he destroyed the document before sharing it with anyone else. Dkt. No. 81-1, ¶ 9 & Ex. 3. Mr. Close with O'Melveny & Myers filed this declaration as part of a "Notice of Inadvertent Disclosure of Sealed Document" in which he admitted "he could have done more proactively to better protect the Firm's client from the inadvertent disclosure that occurred here" and assured the Court that he and his firm had taken measures to ensure this sort of mistake would never happen again. Dkt. No. 81, 4:25-28. Yet, one glaring problem with all of this is that the Notice and all the statements therein about what previously happened and what Mr. Close and his firm O'Melveny & Myers would or would not do going forward was written *not* by Mr. Close, but his client

[2] "Advise" being a word we hear far too often in this suit from the Rosette defendants.

Ms. Bazzazieh, according to the document properties for the PDF file:



See Dkt. Nos. 88; 88-1, Exs. A-C.

A bigger problem is the "inadvertent" disclosure the Notice and related documents reference is *not* the same as the one that is set forth in the proposed First Supplemental Complaint. That pleading discusses an entirely *separate* disclosure of sealed documents in this case by the attorneys of Rosette, LLP – documents that were sent to an enrolled Pauma tribal member "who has strong loyalties to [Mr.] Rosette and is related to Keeny Escalanti." Dkt. No. 71-1, ¶ 20. Much like the *other* dissemination of sealed documents the Rosette defendants are actually willing to acknowledge, the one underlying the Fist Supplemental Complaint involves multiple e-mail transmissions, with the documents going from O'Melveny & Myers, to Rosette, LLP, to the Pauma tribal member at issue, to potentially hundreds of others of individuals both in and outside of the tribe. *Id.* at ¶¶ 18-22. Taken together, the disclosures that are known to date represent two predicate

acts, both very specific in detail, both involving the wires, and both containing elements of deceit at least with respect to Mr. Rosette given the standards of professional conduct an attorney promises to adhere to when applying for admission to practice in the Southern District of California.[3] *See* CivLR 83.4(b). Perhaps these latest predicate acts suffice to transform the Sixth Claim for Relief into a plausible RICO claim; or perhaps these events represent something else, such as a State law claim for interference with contract or prospective economic advantage. Whatever the case may be, they certainly amount to *something* and one of the reasons Williams & Cochrane filed the motion for leave was to obtain this Court's preliminary impressions so it could fashion these allegations into a cognizable claim of one form or another.

II. REQUESTED PROCESS GOING FORWARD

Obviously, the course preferred by the opposing parties is that the Court turn a blind eye to the allegations in the First Supplemental Complaint and simply give Williams & Cochrane two weeks to correct the deficiencies in the First Amended Complaint and file the updated pleading with the Court. Dkt. No. 91, 3:11-13. Williams & Cochrane would prefer something more, like the Court discussing the new allegations as part of its Rule 15 analysis of whether the supplemental material helped save an "original pleading [that was] defective in stating a claim." Fed. R. Civ. P. 15(d). Regardless of the ultimate handling of the motion, Williams & Cochrane will respectfully request two things from this Court – one substantive and the other procedural in nature. First, from a ***substantive*** perspective, Williams & Cochrane requests that the Court explicitly grant leave to amend to use the existing and new allegations in the Sixth Claim for Relief to state an interference with contract-type claim against Rosette, as the Court suggested might be viable in its recent order on the Rule 12 motions. *See* Dkt. No. 89, 28:21-24 ("For example, while Rosette's instruction to the Quechan councilmembers to breach their contract with W&C might constitute interference with W&C's contract, it in no way could be considered an

[3] Not to mention, deceit also inheres in the false representations of "inadvertence" and omissions that underlie the Notice the Rosette defendants filed with this Court.

attempt at deceit."). Explicitly allowing this revision will save substantial resources when the opposing parties inevitably move to strike the new material in the Second Amended Complaint for purportedly exceeding the scope of the Court's leave to amend.

Second, from a ***procedural*** perspective, Williams & Cochrane also requests a reasonable period of time in which to revise the First Amended Complaint. A considerable amount of time this spring went towards motion practice in this case and Williams & Cochrane now has other impending deadlines, including a rather significant one with the Ninth Circuit on July 11, 2018. Given the representations by the opposing parties that they planned on vigorously opposing the pending motion for leave, Williams & Cochrane did not anticipate having to conduct further largescale work in this case on an imminent basis, especially in light of the June 6, 2018 Order explaining that the Court would "set a deadline for Plaintiffs to file an amended complaint" *after* ruling on the instant motion that is set for hearing on July 6, 2018. Dkt. No. 89, 39:6-11. Not to mention, something more than the two weeks proposed by the opposing parties is needed so Williams & Cochrane will have the requisite time to obtain the evidence needed to bolster their malpractice and RICO claims, the latter of which simply requires identifying of one further predicate act. *See* Dkt. No. 89, 33:22-24 (indicating the RICO conspiracy claim could go forward if Williams & Cochrane identifies "another viable allegation suggesting that the relevant defendants… agreed to commit or participated in wire or mail fraud"). Thus, setting the filing deadline for the forthcoming Second Amended Complaint to a future date at least a reasonable period of time after July 11, 2018 will help ensure that Williams & Cochrane can handle all of its current workload without having to carry an undue burden.

CONCLUSION

For the foregoing reasons, Williams & Cochrane respectfully requests that the Court grant the motion for leave, permit Williams & Cochrane to amend in the requested manner, and set the filing date for the Second Amended Complaint to some date that is a

reasonable period of time after July 11, 2018.[4]

RESPECTFULLY SUBMITTED this 21st day of June, 2018

WILLIAMS & COCHRANE, LLP, *et al.*

By: */s/ Kevin M. Cochrane*

Cheryl A. Williams
Kevin M. Cochrane
caw@williamscochrane.com
kmc@williamscochrane.com
WILLIAMS & COCHRANE, LLP
525 B Street, Suite 1500
San Diego, CA 92101
Telephone: (619) 793-4809

---

[4] In line with the opposing parties, Williams & Cochrane also asks that the Court vacate the hearing date for the pending motion if it intends to grant leave to file a Second Amended Complaint that can state claims based upon the conduct discussed herein.