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 12 *Quechan Tribe of the Fort Yuma Indian*
 13 *Reservation, Keeny Escalanti, Sr., and*
 14 *Mark William White II*

15 **IN THE UNITED STATES DISTRICT COURT**
 16 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

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

23 (All 28 Individuals Listed in ¶ 13)

24 Plaintiffs,

25 v.

26 QUECHAN TRIBE OF THE FORT
 27 YUMA INDIAN RESERVATION, a
 28 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 10,

Defendants.

CASE NO.: 17-cv-01436-GPC-MDD

**OPPOSITION TO WILLIAMS &
 COCHRANE’S (1) MOTION TO
 STRIKE QUECHAN TRIBE’S
 ANSWER TO PLAINTIFFS’
 FIRST AMENDED COMPLAINT
 AND COUNTERCLAIMS, OR, (2)
 MOTION TO CONTINUE
 RESPONSE OBLIGATION
 UNDER FEDERAL RULE OF
 CIVIL PROCEDURE 12**

Judge: Hon. Gonzalo P. Curiel
 Courtroom: 2D
 Date: August 24, 2018
 Time: 1:30 p.m.

1 **INTRODUCTION**

2 The Quechan Tribe of the Fort Yuma Indian Reservation (“Tribe”) has sought
3 to assert its claims against Williams & Cochrane, LLP (“W&C”) in the most efficient
4 way possible—as counterclaims in this already-pending action. Most courts hold that
5 counterclaims must be asserted with an answer. As a result, the Tribe waited while
6 W&C amended its complaint and then while the second round of Rule 12 motions was
7 resolved before answering the remaining claims in the FAC and asserting its
8 Counterclaims. Filing its Counterclaims now, with an answer, was procedurally
9 proper and the Tribe should not have to delay any further.

10 And, make no mistake, the delay resulting from not being allowed to assert its
11 Counterclaims now would be significant. Because W&C received leave to amend
12 certain of its claims and will attempt to reassert them, there will be another round of
13 Rule 12 motions. This effectively means that the Tribe will not file an Answer to a
14 Second Amended Complaint (“SAC”)—or potentially to a Third Amended
15 Complaint, depending on the outcome of the Rule 12 motions—until late September
16 at the earliest, or more likely, October or November.

17 Delay, however, is what W&C seeks to achieve through its motion. It is
18 another effort to extend this litigation through the next Tribal election cycle. Forcing
19 the Tribe to wait until late Fall to file counterclaims against W&C—or allowing W&C
20 to delay its response to the Counterclaims until then—would be inefficient, would
21 unnecessarily prolong the litigation, and would prejudice the Tribe. W&C should not
22 be allowed a multi-month extension of time to respond to the Counterclaims, which is
23 what would occur if the this motion is granted, or if W&C is otherwise allowed to
24 respond to the Counterclaims after resolving this motion on the current schedule.

25 W&C’s motion is either an improper Rule 12(f) motion or a motion for an
26 indefinite extension of time to respond to the Counterclaims. However construed, the
27 motion should be denied and the Tribe’s Counterclaims should proceed to discovery.
28 The Tribe files this Opposition now, weeks before it is due, and before W&C’s

1 deadline for responding to the Counterclaims, to advance the resolution of this issue
2 expeditiously and avoid any suggestion by W&C that it would be prejudiced by not
3 being allowed an additional opportunity to respond to the Counterclaims.

4 **PROCEDURAL BACKGROUND**

5 W&C initially filed a complaint on July 17, 2017. The Court struck that
6 complaint and W&C filed another complaint on September 19, 2017. After
7 Defendants moved to dismiss and strike W&C's complaint, W&C filed the First
8 Amended Complaint ("FAC") on March 2, 2018. The Tribe, Keeny Escalanti, Sr.,
9 and Mark William White II (collectively, "Quechan Defendants") moved to dismiss
10 the claims against them in the FAC, except for W&C's breach of contract claim based
11 on W&C's purported entitlement to an additional "reasonable fee" under the
12 "Discharge and Withdrawal" section of the Fee Agreement (Section 11). *See* Mot. to
13 Dismiss, Dkt. No. 50-1. With its oppositions to Defendants' motions to dismiss,
14 W&C moved for leave to file a supplemental complaint. On June 7, 2018, the Court
15 granted in part and denied in part the Quechan Defendants' motion to dismiss. *See*
16 Order on Mot. to Dismiss, Dkt. No. 89. This left alive a portion of the breach of
17 contract claim alleged in the FAC, as well as the breach of the covenant of good faith
18 and fair dealing claim against the Tribe.

19 On June 21, 2018, the Tribe filed an Answer to the FAC and Counterclaims.
20 Answer to Am. Compl., Dkt. No. 94. On June 22, W&C filed the instant motion,
21 which seeks to strike the Tribe's Answer or "continue its response obligations" to the
22 Counterclaims. Mot. to Strike Doc., Dkt. No. 95. On June 26, the Court denied
23 W&C's motion for leave to file a supplemental complaint and directed W&C to file a
24 SAC by July 20. Order on Mot. for Leave to File Doc., Dkt. No. 97.

25 Under the Federal Rules of Civil Procedure, W&C's deadline to respond to the
26 Counterclaims is July 12. Without any further filing from W&C, W&C's instant
27 motion to strike will be its only response to the Counterclaims. The instant motion
28 may therefore be construed as a Rule 12(f) motion (which should be denied), or,

1 alternatively, W&C will not have timely responded to the Counterclaims.

2 **ARGUMENT**

3 The Tribe’s Answer was procedurally proper pursuant to Fed. R. Civ. P.
4 12(a)(4)(A) and W&C has an obligation to respond to the Tribe’s Counterclaims by
5 July 12, 2018, under Fed. R. Civ. P 12(a)(1)(B). W&C’s motion should be denied.

6 **I. The Tribe’s Answer and Counterclaims Were Procedurally Proper and**
7 **Should Not Be Stricken.**

8 As a general matter, motions to strike are disfavored. *Armstead v. City of Los*
9 *Angeles*, 66 F. Supp. 3d 1254, 1271 (C.D. Cal. 2014), *aff’d sub nom. Alvarado v. City*
10 *of Los Angeles*, 720 F. App’x 889 (9th Cir. 2018); *Neilson v. Union Bank of Cal., N.A.*,
11 290 F. Supp. 2d 1101, 1152–53 (C.D. Cal. 2003). Even putting aside the high bar
12 W&C must clear, W&C’s motion to strike should be denied because it fails to identify
13 any “redundant, immaterial, impertinent, or scandalous matter” as required under Fed.
14 R. Civ. P. 12(f). Instead, W&C’s sole basis for moving to strike the Tribe’s Answer is
15 that it is premature. But the Tribe’s Answer and Counterclaims were procedurally
16 proper and there is no basis under the Federal Rules of Civil Procedure for striking
17 them.

18 ***First***, the FAC was not dismissed in its entirety. On June 7, 2018, the Court
19 granted in part and denied in part the Quechan Defendants’ motion to dismiss the
20 FAC, leaving alive two claims against the Tribe. *See* Mot., Dkt. No. 50-1; *see also*
21 Order, Dkt. No. 89. The FAC was thus still the operative complaint on June 21 when
22 the Tribe filed its Answer and Counterclaims, and remains the operative complaint
23 until W&C files a SAC. *See Ransom v. Lemmon*, No. 3:12-CV-065, 2012 WL
24 3292897, at *1 (N.D. Ind. Aug. 9, 2012) (“An amended complaint becomes
25 controlling once it is filed because the prior pleading is withdrawn by operation of
26 law.”).

27 ***Second***, the Court’s June 7 ruling on the Quechan Defendants’ motion to
28 dismiss explicitly did not set a time for responding to the FAC or a potential SAC, and

1 at that time, W&C's motion for leave to file the supplemental complaint was still
2 pending. Therefore, under Fed. R. Civ. P 12(a)(4)(A), the Tribe had 14 days
3 following the Court's ruling on the motions to dismiss to file an Answer to the
4 pending claims in the FAC. Because Counterclaims must be filed with an Answer,
5 the Tribe either had to file its Answer and Counterclaims on or before June 21, or wait
6 to assert counterclaims until it answered a future amended complaint. Fed. R. Civ. P
7 13(a); *see also In re Smith*, 52 B.R. 792, 795, 795 fn. 4 (Bankr. E.D. Cal. 1985);
8 *Kuschner v. Nationwide Credit, Inc.*, 256 F.R.D. 684, 689 (E.D. Cal. 2009); *Robben v.*
9 *Justin*, No. 2:13-CV-00238-MCE-DAD, 2013 WL 2103623, at *2 (E.D. Cal. May 14,
10 2013); *Primerica Life Ins. Co. v. Davila*, No. 1:10-CV-1924 AWI SMS, 2011 WL
11 643395, at *3 (E.D. Cal. Feb. 17, 2011). The Tribe chose to file its Counterclaims on
12 June 21.

13 **Third**, filing the Counterclaims now furthers the efficient and timely resolution
14 of the dispute between W&C and the Tribe. In fact, filing the Counterclaims with the
15 Answer on June 21 was the most efficient procedure for asserting those claims. The
16 Tribe's only other option for initiating claims prior to answering a future complaint
17 was to initiate a separate proceeding, which would needlessly create additional costs
18 and work for the courts and the parties. Bringing the Counterclaims now in this Court
19 without having to engage in motion practice to coordinate multiple proceedings was
20 the most efficient path and will move the case to resolution more quickly than waiting
21 months to do so.

22 **Finally**, contrary to W&C's arguments, whether the Tribe will have to prepare
23 another Answer to an amended complaint at some point in the future is irrelevant to
24 deciding this motion. A potential answer to a future amended complaint does not
25 create inefficiencies for W&C or the Court. The Tribe would prepare the Answer, to
26 which no response would be required. And the Tribe will not necessarily have to
27 amend the Counterclaims. *AnTerra Grp. Inc. v. KiVAR Chem. Techs.*, No.
28 SACV1300734 JVS (ANx), 2014 WL 12589631, at *3 (C.D. Cal. May 23, 2014)

1 (“Revisions to a complaint do not require revisions to a counterclaim.”); *Hayden v.*
2 *Ariz. Pool & Fountain Guys, LLC*, No. CV-16-00840-PHX-SRB, 2016 WL 9456363,
3 at *1 (D. Ariz. Aug. 2, 2016) (“While an amendment to a complaint requires revisions
4 to an answer, it does not necessitate revisions to a counterclaim.”). The
5 Counterclaims are now properly on file. They are the operative claims against W&C
6 and will remain so after W&C files the SAC. *See id.*

7 **II. Williams & Cochrane LLP’s Request to Continue Its “Response**
8 **Obligation” Should Be Denied.**

9 The Tribe asserted its Counterclaims against W&C on June 21, 2018. Pursuant
10 to Fed. R. Civ. P 12(a)(1)(B), W&C has an obligation to respond to the Tribe’s
11 Counterclaims by July 12, 2018. The only basis W&C advances for delaying a
12 response to the Counterclaims is that they will be “inundate[d] . . . with work while”
13 preparing their SAC. Mem. at 1-2, Dkt. 95-1. If that was the case, the normal course
14 would have been for W&C to approach the Tribe and ask for a reasonable extension
15 of time to respond to the Counterclaims, which the Tribe would have granted. But
16 W&C did not request a stipulation for a reasonable extension of time; instead it
17 moved, with no notice, for what will amount to a multi-month extension.

18 W&C offers no procedural basis for its motion requesting a continuance of its
19 response obligation under Fed. R. Civ. P. 12. Instead, W&C cites two cases for the
20 proposition that an answer is procedurally improper if it is directed at a pleading that
21 was not operative when the answer was filed. Mem. at 4, Dkt. No. 95-1. But as
22 explained above, that is not the case here—the Tribe’s Answer is directed at the FAC,
23 which is the operative complaint until W&C files a SAC. In addition, and critically
24 here, the filing of a SAC will not moot the Counterclaims—they will remain operative
25 even after W&C files a SAC. *See AnTerra Grp.*, 2014 WL 12589631, at *3.

26 To support its argument, W&C cites docket entries from *Pauma Band of*
27 *Luiseno Mission Indians of Pauma & Yuima Reservation v. State of Cal.*, No. 09-
28 01955 (S.D. Cal.), asserting that the district court there ignored the defendants’ answer

1 to the complaint and required the defendants to answer the plaintiff's subsequent
 2 amended complaint. Mem. at 4-5, Dkt. No. 95-1. But the docket entries in *Pauma* are
 3 not instructive here at all, other than that they demonstrate the potential delay that
 4 could occur if W&C was allowed to avoid responding to the Tribe's Counterclaims.
 5 In *Pauma*, the defendants answered the original complaint, and then answered the
 6 amended complaint—almost *11 months* after filing their initial answer. *Compare*
 7 Answer to Compl. (Sept. 9, 2011), Dkt. No. 129 with Answer to Am. Compl. (Aug. 3,
 8 2012), Dkt. No. 191. Neither answer asserted counterclaims. Although plaintiff's
 9 amended complaint required the defendants to file an additional answer, the court did
 10 not strike the original answer. Both answers were procedurally proper. If the *Pauma*
 11 litigation history has any relevance here at all, it shows that there is no basis for
 12 striking the Answer or Counterclaims. The Tribe can simply file an Answer to the
 13 SAC when required to do so. Meanwhile, the Tribe's Counterclaims are operative and
 14 should proceed accordingly.

CONCLUSION

15
 16 The Tribe's Answer is procedurally proper. It is not premature because it is
 17 directed at the FAC rather than the anticipated SAC, and it was timely filed. W&C
 18 has provided no basis for striking the Answer or for extending its time to respond to
 19 the Counterclaims. W&C's motion should therefore be denied.

20 Dated: July 10, 2018

Respectfully submitted,

21
 22 /s/ Christopher T. Casamassima

23 Christopher T. Casamassima
 Rebecca A. Girolamo

24 WILMER CUTLER PICKERING
 25 HALE AND DORR LLP

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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2018, 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 address 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 July 10, 2018, at Los Angeles, California.

/s/ Christopher T. Casamassima
Christopher T. Casamassima