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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TSI AKIM MAIDU OF TAYLORSVILLE
RANCHERIA,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
THE INTERIOR, et al.,

Defendants.

No. 2:17-cv-01156-TLN-CKD

ORDER

This matter is before the Court on Plaintiff Tsi Akim Maidu of Taylorsville Rancheria’s (“Plaintiff”) Motion to Amend. (ECF No. 58.) Defendants United States Department of the Interior, David Bernhardt, and Tara Katuk Mac Lean Sweeney (collectively, “Defendants”) filed an opposition. (ECF No. 61.) Plaintiff filed a reply. (ECF No. 62.) For the reasons set forth below, the Court GRANTS Plaintiff’s motion.

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1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 The Court need not recount all background facts, as they are set forth fully in the Court’s
3 April 24, 2020 Order. (*See* ECF No. 41.) In short, Plaintiff sued Defendants pursuant to the
4 Administrative Procedure Act (“APA”) challenging (1) its loss of status as a federally recognized
5 Indian tribe and (2) a 2015 decision that Plaintiff is ineligible to petition for acknowledgment
6 under Part 83¹ (the “2015 decision”). (*Id.* at 7.) The Court previously dismissed Plaintiff’s loss
7 of tribal status claim as time-barred but allowed Plaintiff’s claim as to the 2015 decision to
8 proceed. (*Id.*) On May 28, 2020, Defendants sent a letter to Plaintiff retracting the 2015 decision
9 (the “2020 retraction”) and asked Plaintiff to stipulate to dismiss this action as moot. (ECF No.
10 57 at 2.) Instead of stipulating to dismissal, Plaintiff brought the instant motion to amend. (ECF
11 No. 58.)

12 **II. STANDARD OF LAW**

13 Granting or denying leave to amend a complaint rests in the sound discretion of the trial
14 court. *Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). When a court issues a
15 pretrial scheduling order that establishes a timetable to amend, Federal Rule of Civil Procedure
16 (“Rule”) 16 governs amendments to the complaint. *Coleman v. Quaker Oats Co.*, 232 F.3d 1271,
17 1294 (9th Cir. 2000). Under Rule 16, a plaintiff must show good cause for not having amended
18 the complaint before the time specified in the pretrial scheduling order. *Id.* The good cause
19 standard primarily considers the diligence of the party seeking the amendment. *Johnson v.*
20 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). “Moreover, carelessness is not
21 compatible with a finding of diligence and offers no reason for a grant of relief.” *Id.* The focus
22 of the inquiry is on the reasons why the moving party seeks to modify the complaint. *Id.* If the
23 moving party was not diligent, then good cause cannot be shown, and the inquiry should end. *Id.*

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25 ¹ “When acknowledged, a tribe is added to the list of federally recognized tribes, which [the
26 Department of the Interior] has published annually in the Federal Register since 1979.” *Agua*
27 *Caliente Tribe of Cupeno Indians of Pala Rsrv. v. Sweeney*, 932 F.3d 1207, 1214 (9th Cir. 2019)
28 (citing 25 C.F.R. § 83.6(a)). “Pursuant to the acknowledgment regulations — the Part 83 process
— other tribes may petition to be added to the list.” *Id.* (citing 25 C.F.R. § 83.5).

1 Even if the good cause standard is met under Rule 16(b), the Court has the discretion to
2 refuse amendment if it finds reasons to deny leave to amend under Rule 15(a). *Johnson*, 975 F.2d
3 at 610. Under Rule 15(a)(2), “a party may amend its pleading only with the opposing party’s
4 written consent or the court’s leave,” and the “court should freely give leave when justice so
5 requires.” The Ninth Circuit has considered five factors in determining whether leave to amend
6 should be given: “(1) bad faith[;] (2) undue delay[;] (3) prejudice to the opposing party[;] (4)
7 futility of amendment; and (5) whether plaintiff has previously amended his complaint.” *In re W.*
8 *States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 738 (9th Cir. 2013) (citing *Allen v. City*
9 *of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990)).

10 III. ANALYSIS

11 Plaintiff seeks leave to “revise, clarify, and elaborate” allegations related to the 2015
12 decision that have been affected by the 2020 retraction and also to challenge the 2020 retraction
13 directly. (ECF No. 58-2 at 6.) The Court will address Rule 16 and Rule 15 in turn.

14 A. Rule 16

15 Because the Pretrial Scheduling Order requires Plaintiff to show good cause to amend at
16 this stage, Plaintiff must first meet Rule 16’s good cause standard. (*See* ECF No. 44 at 1.)

17 Defendants make two separate arguments: (1) there is no good cause to modify the
18 scheduling order to add a claim for the 2020 retraction because the 2020 retraction is not a final
19 agency decision subject to judicial review under the APA; and (2) there is no good cause to
20 modify the scheduling order to allow Plaintiff to elaborate on its claim regarding the 2015
21 decision because Plaintiff could have included the proposed allegations in earlier versions of the
22 complaint. (ECF No. 61 at 4–6.)

23 Defendants’ first argument regarding the claim for the 2020 retraction goes to futility
24 under Rule 15, not diligence under Rule 16. The Court is not persuaded Plaintiff was not diligent
25 in bringing this claim. To the contrary, Plaintiff brought this motion only three months after the
26 2020 retraction, during which time the case was stayed and Plaintiff acquired new counsel.

27 Defendants’ second argument as to the claim for the 2015 decision does address diligence.
28 In reply, Plaintiff vaguely argues “diligent review and new research related to this matter led to

1 discovery of documents not previously in Plaintiff’s possession.” (ECF No. 62 at 6.) Plaintiff
2 also argues Defendants possessed these documents and it is unknown whether Defendants
3 considered the documents when issuing the 2015 decision or 2020 retraction. (*Id.*) Plaintiff
4 seems to concede these additional facts and documents were “in public record” and does not
5 contest Defendants’ assertion that the documents are “decades old.” (*Id.* at 7.)

6 This is a very close call. Because the thrust of Plaintiff’s argument seems to be that the
7 2020 retraction somehow modified the 2015 decision — and the Court has found Plaintiff was
8 diligent in seeking leave to add the claim about the 2020 retraction — the Court finds Plaintiff
9 was reasonably diligent in moving to amend such that Rule 16’s good cause standard is satisfied.
10 *See Johnson*, 975 F.2d at 609.

11 B. Rule 15

12 Defendants only address one Rule 15 factor: futility. (ECF No. 61 at 7.) A proposed
13 amendment is futile “only if no set of facts can be proved under the amendment to the pleadings
14 that would constitute a valid and sufficient claim or defense.” *Miller v. Rykoff-Sexton, Inc.*, 845
15 F.2d 209, 214 (9th Cir. 1988). However, denial of leave to amend on this ground is
16 rare. *Netbula, LLC v. Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal. 2003). “Ordinarily, courts
17 will defer consideration of challenges to the merits of a proposed amended pleading until after
18 leave to amend is granted and the amended pleading is filed.” *Id.*

19 Defendants argue “it would be futile to allow amendment to add an APA claim on the
20 2020 retraction since that is not a final agency action subject to judicial review” and it would be
21 futile to amend the claim as to the 2015 decision because that claim is already before the Court.
22 (ECF No. 61 at 7–8.) In reply, Plaintiff argues amendment is not futile because the 2020
23 retraction is an agency action that impacted the 2015 decision already at issue in this suit. (ECF
24 No. 62 at 3.)

25 It is unclear why Plaintiff seeks to challenge the 2020 retraction, which apparently
26 benefits Plaintiff and arguably moots the case entirely. Put simply, to the extent Plaintiff
27 challenges the 2015 decision that prevented it from petitioning for Part 83 acknowledgment, the
28 2020 retraction now allows Plaintiff to file a Part 83 petition. Plaintiff seems to believe that its

1 ability to engage in the Part 83 process is “illusory” because the 2020 retraction left intact a
2 portion of the 2015 decision indicating that Plaintiff’s federal relationship was terminated —
3 which Plaintiff argues ultimately will preclude Part 83 acknowledgement. (ECF No. 58-2 at 11–
4 12.) In opposition, Defendants argue such an argument is speculative and Plaintiff’s “rights and
5 obligations under Part 83 will not be determined until Plaintiff submits a [Part 83] petition and the
6 Department makes its final agency decision on that petition.” (ECF No. 61 at 6.)

7 Despite the Court’s strong doubts about the viability of Plaintiff’s claims, the Court
8 declines to resolve these issues in ruling on the instant motion to amend. Based on the limited
9 arguments and record before the Court, the Court cannot say that “no set of facts” could be
10 alleged to state a plausible claim. *Miller*, 845 F.2d at 214.

11 Moreover, Defendants raise no arguments as to the remaining Rule 15 factors. Absent
12 any argument or evidence to the contrary, the Court finds those factors weigh in favor of granting
13 leave to amend. As to prejudice, which weighs most heavily in the Court’s analysis, there is no
14 indication Defendants will be prejudiced by the proposed amendments. *See Eminence Capital,*
15 *LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

16 Accordingly, the Court GRANTS Plaintiff’s motion.

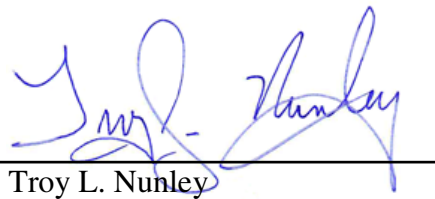
17 **IV. CONCLUSION**

18 For the foregoing reasons, the Court GRANTS Plaintiff’s Motion to Amend. (ECF No.
19 58.) The Court ORDERS Plaintiff to file an amended complaint not later than thirty (30) days
20 from the electronic filing date of this Order. Defendants shall file a responsive pleading not later
21 than twenty-one (21) days after the electronic filing date of Plaintiff’s amended complaint.

22 IT IS SO ORDERED.

23 September 9, 2021

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Troy L. Nunley
United States District Judge