

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

Case No.: 3:09-cv-02330-WQH-JLB

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4 RINCON MUSHROOM
5 CORPORATION OF AMERICA, a
6 California Corporation; and MARVIN
7 DONIUS, a California resident,

8 Plaintiffs,

9 v.

10 BO MAZZETTI; JOHN CURRIER;
11 VERNON WRIGHT; GILBERT
12 PARADA; STEPHANIE SPENCER;
13 CHARLIE KOLB; DICK
14 WATENPAUGH; TISHMALL
15 TURNER; STEVE STALLINGS;
16 LAURIE E. GONZALEZ; ALFONSO
17 KOLB, SR.; MELISSA ESTES; and
18 RINCON BAND OF LUISEÑO
19 INDIANS, a federally recognized Indian
20 Tribe,

21 Defendants.

22 RINCON BAND OF LUISEÑO
23 INDIANS, a federally recognized Indian
24 Tribe,

25 Counter-Claimant,

26 v.

27 RINCON MUSHROOM
28 CORPORATION OF AMERICA, a
California Corporation; and MARVIN
DONIUS, a California resident,

Counter-Defendants.

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2 RINCON MUSHROOM
3 CORPORATION OF AMERICA, a
4 California Corporation; and MARVIN
5 DONIUS, a California resident,

6 Third-Party Claimants,

7 v.

8 COUNTY OF SAN DIEGO, a public
9 entity; SAN DIEGO GAS & ELECTRIC,
10 a public utility; RINCON BAND OF
11 LUISEÑO INDIANS, a federally
12 recognized Indian Tribe,

13 Third-Party Defendants.

14 HAYES, Judge:

15 The matters before the Court are the Motions to Dismiss the Third-Party Complaint
16 filed by San Diego Gas & Electric (“SDG&E”) (ECF No. 186), Rincon Band of Luiseno
17 Indians (the “Tribe”) (ECF No. 188), and County of San Diego (the “County”) (ECF No.
18 189), and the Motion for Entry of Judgment filed by Rincon Mushroom Corporation of
19 America, Inc. and Marvin Donius (collectively “RMCA/Donius”) (ECF No. 187).

20 **I. PROCEDURAL BACKGROUND**

21 On October 20, 2009, Plaintiff RMCA initiated this action by filing a Complaint
22 bringing twelve causes of action against Defendants Bo Mazzetti, John Currier, Vernon
23 Wright, Gilbert Parada, Stephanie Spencer, Charlie Kolb, Dick Watenpaugh, and unnamed
24 Does, in their personal and official capacities as representatives of the Tribe. (ECF No. 1).
25 The Complaint alleged that Defendants and the Tribe conspired to regulate activity on a
26 five-acre parcel of land owned by RMCA/Donius (the “Property”) located within the outer
27 boundaries of the Tribe’s reservation, with the goal of devaluing the Property so that the
28 Tribe could purchase it at a discount. The Complaint sought damages, costs and attorneys’

1 fees, and declaratory and injunctive relief denying the Tribe regulatory and adjudicative
2 authority over RMCA and the Property.

3 On September 21, 2010, the Court issued an Order requiring RMCA to exhaust its
4 remedies in tribal court prior to litigating the action in this Court. (ECF No. 54). Litigation
5 in the tribal court system concluded when the Rincon Tribal Court entered an Amended
6 Judgment in favor of the Tribe on June 26, 2020. (*See* ECF No. 160-8 at 188).

7 On April 22, 2020, RMCA filed a Motion to Reopen Case in this Court on the basis
8 that it had exhausted its tribal remedies. (ECF No. 122). RMCA also filed a Motion for
9 Leave to File First Amended Complaint. (ECF No. 123). On July 15, 2020, the Court issued
10 an Order granting both motions. (ECF No. 131). On July 17, 2020, RMCA/Donius filed a
11 First Amended Complaint (“FAC”), alleging fourteen causes of action against the Tribe
12 and various tribal officials. (ECF No. 132). On September 21, 2020, Defendants filed an
13 Answer to the FAC, and the Tribe filed a counterclaim requesting “recognition and
14 enforcement of the June 26, 2020 [Amended] Judgment of the Tribal Court.” (ECF No.
15 134 at 113).

16 On September 29, 2020, RMCA/Donius filed an Answer to the Tribe’s counterclaim
17 and a Third-Party Complaint (“TPC”) against SDG&E, the Tribe, and the County. (ECF
18 No. 136). The TPC alleges that the Tribe “create[ed] and adopt[ed] unlawful Tribal
19 environmental ordinances to falsely claim that the Tribe has jurisdiction over
20 [RMCA/Donius’] use of their property, and that [RMCA/Donius] are purportedly violating
21 the Tribe’s environmental ordinances, for the purpose of pressuring and forcing
22 RMCA/Donius to sell to the Tribe their property ‘on the cheap.’” (*Id.* ¶ 8). The TPC alleges
23 that SDG&E and the County “conspired” with the Tribe by, respectively, “refus[ing] to
24 restore power” to the Property and “assist[ing] the [] Tribe in placing [] cement blocks on
25 RMCA/Donius’ property and/or on the County property adjacent to RMCA/Donius’
26 property so as to block entrance and exit onto RMCA/Donius’ property.” (*Id.* ¶¶ 16, 28,
27 63).

28 RMCA/Donius bring the following twelve causes of action in the TPC: (1)

1 declaratory relief against all Third-Party Defendants; (2) injunctive relief against all Third-
2 Party Defendants; (3) intentional interference with prospective economic advantage
3 against all Third-Party Defendants; (4) intentional interference with contractual relations
4 against all Third-Party Defendants; (5) negligent interference with prospective economic
5 advantage against all Third-Party Defendants; (6) aiding and abetting in intentional
6 interference with prospective economic advantage against all Third-Party Defendants; (7)
7 aiding and abetting in intentional interference with contract against all Third-Party
8 Defendants; (8) denial of equal rights concerning real property in violation of 42 U.S.C. §
9 1982 against all Third-Party Defendants; (9) conspiracy to deprive Plaintiffs of enjoyment
10 of rights secured by law in violation of 42 U.S.C. § 1985(3) against all Third-Party
11 Defendants; (10) abuse of process against the Tribe; (11) trespass against the Tribe and the
12 County; and (12) violation of the California Public Utilities Code against SDG&E.
13 RMCA/Donius request declaratory and injunctive relief; special, compensatory, general,
14 punitive or exemplary, and past and future damages; and attorney’s fees, costs, and
15 expenses.

16 On March 18, 2021, the Court issued an Order bifurcating the proceedings to first
17 address RMCA/Donius’ and the Tribe’s claims and counterclaim regarding the recognition
18 and enforcement of the Amended Judgment of the Rincon Trial Court, before addressing
19 the third-party claims contained in the TPC. (ECF No. 155). On March 16, 2022, the Court
20 issued an Order granting summary judgment in favor of Defendants and against
21 RMCA/Donius, and recognizing and enforcing the Amended Judgment of the Rincon Trial
22 Court (the “Summary Judgment Order”). (ECF No. 176).

23 On June 3, June 6, and June 10, 2022, SDG&E, the Tribe, and the County filed
24 respective Motions to Dismiss the TPC. (ECF Nos. 186, 188, 189).

25 On June 6, 2022, RMCA/Donius filed a Motion for Entry of Judgment, requesting
26 that the Court enter judgment with respect to the claims and counterclaim adjudicated in
27 the Summary Judgment Order and stay further proceedings. (ECF No. 187).

28 On June 23, July 5, and July 11, 2022, RMCA/Donius filed Responses in opposition

1 to the respective Motions to Dismiss the TPC. (ECF Nos. 190, 196, 197).

2 On June 24, 2022, Defendants filed a Response in opposition to the Motion for Entry
3 of Judgment. (ECF No. 192).

4 On June 27, July 11, and July 12, 2022, SDG&E, the County, and the Tribe filed
5 Replies in support of their respective Motions to Dismiss the TPC. (ECF Nos. 193, 198,
6 200).

7 On July 5, 2022, RMCA/Donius filed a Reply in support of their Motion for Entry
8 of Judgment. (ECF No. 195).

9 **II. MOTIONS TO DISMISS THE TPC**

10 The Tribe and the County each contend that the TPC should be dismissed because it
11 does not comply with Rule 14 of the Federal Rules of Civil Procedure. The Tribe contends
12 that the TPC is improper because the Tribe is already a party to the action. The County
13 contends that the TPC is improper because “[t]he TPC does not allege that the County is
14 liable for any liability asserted in a claim against [Third-Party Plaintiffs].” (ECF No. 189-
15 1 at 7). Third-Party Defendants further contend that the TPC should be dismissed for failure
16 to state a claim. RMCA/Donius contend that the claims in the TPC are well-pleaded.

17 Rule 14 of the Federal Rules of Civil Procedure governs the filing of third-party
18 complaints. Under Rule 14(a), “A defending party may, as third-party plaintiff, serve a
19 summons and complaint on a nonparty who is or may be liable to it for all or part of the
20 claim against it.” Fed. R. Civ. P. 14(a)(1). A plaintiff is considered a “defending party” for
21 the purpose of Rule 14(a) when a claim, such as a counterclaim, is asserted against the
22 Plaintiff. *See id.* 14(b) (“When a claim is asserted against a plaintiff, the plaintiff may bring
23 in a third party if this rule would allow a defendant to do so.”).

24 In this case, the Tribe asserted a counterclaim against RMCA/Donius requesting
25 “recognition and enforcement of the June 26, 2020 [Amended] Judgment of the Tribal
26 Court” on September 21, 2022. (ECF No. 134 at 113). On September 29, 2020,
27 RMCA/Donius filed an Answer to the Tribe’s counterclaim and the TPC. (*See* ECF No.
28 136).

1 RMCA/Donius were “defending parties” at the time they filed the TPC due to the
2 existence of the Tribe’s counterclaim against RMCA/Donius. However, the third-party
3 claims against the Tribe are facially improper because the Tribe was a party to the existing
4 action. The claims in the TPC against SDG&E and the County do not attempt to transfer
5 RMCA/Donius’ liability on the Tribe’s counterclaim to Third-Party Defendants through a
6 theory of indemnification, subrogation, breach of warranty, contribution, or in any other
7 way. *See Stewart v. Am. Int’l Oil & Gas Co.*, 845 F.2d 196, 200 (9th Cir. 1988) (“The
8 crucial characteristic of a Rule 14 claim is that [defending party] is attempting to transfer
9 to the third-party defendant the liability asserted against him The mere fact that the
10 alleged third-party claim arises from the same transaction or set of facts as the original
11 claim is not enough.”) (quoting Wright & Miller, 6 Fed. Prac. & Proc. § 1446 at 257 (1971
12 ed.)). The Court concludes that the TPC does not comply with Rule 14 because it does not
13 allege claims against nonparties who are or may be liable to RMCA/Donius for all or part
14 of the Tribe’s counterclaim.

15 Although the TPC is improper, courts are instructed to “construe, administer, and
16 employ” the Federal Rules of Civil Procedure in a manner that “secure[s] the just, speedy,
17 and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1; *see also*
18 Fed. R. Civ. P. 8(e) (“Pleadings must be construed so as to do justice.”). Pursuant to this
19 directive, some district courts have construed defendants’ improper third-party complaints
20 as counterclaims. *See, e.g., Transcontinental Corp. v. Hyde*, No. 2:08-cv-00805-RCJ-RJJ,
21 2009 WL 10710118, at *4-6 (D. Nev. June 23, 2009); *Comtel Tech., Inc. v. Paul H*
22 *Schwendener, Inc.*, No. 04 C 3879, 2005 WL 433327, at *13 (N.D. Ill. Feb. 22, 2005). *But*
23 *see Trailers Int’l LLC v. Mastercraft Tools Fl., Inc.*, No. 3:15-cv-00171-MO, 2017 WL
24 11510076, at *4 (D. Or. July 7, 2017) (striking improper third-party complaint despite
25 “recogniz[ing] that re-captioning an improperly-labeled third-party complaint might, in
26 some instances, conserve judicial resources”). To address the merits of the claims in the
27 TPC, the Court would have to construe the TPC as an amended complaint brought pursuant
28 to Rule 15 because RMCA/Donius are the plaintiffs in the underlying action and SDG&E

1 and the County are not parties. However, two factors counsel against construing the TPC
2 as an amended complaint in this case.

3 First, construing the TPC as an amended complaint would void allegations contained
4 in the FAC. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) (stating that it is
5 “well-established” that “an amended pleading supersedes the original pleading” and that
6 the original pleading is thereafter treated as non-existent). Although the TPC purports to
7 incorporate by reference certain allegations contained in the FAC, it does not identify
8 which specific allegations are incorporated. (*See* ECF No. 136 ¶ 4 (“RMCA/Donius
9 reallege the allegations set forth in their [FAC] against the [] Tribe and incorporate those
10 allegations by reference in this Third-Party Claim against the [] Tribe.”)). This use of
11 incorporation by reference will cause confusion regarding the allegations that are legally
12 operative, and does not comply with Civil Local Rule 15.1. *See* S.D. Cal. Civ. Local Rule
13 15.1 (“Every pleading to which an amendment is permitted as a matter of right or has been
14 allowed by court order, must be complete in itself without reference to the superseded
15 pleading.”).

16 Second, amendment of the FAC requires leave of Court because RMCA/Donius
17 have already amended their complaint once as a matter of course and have not obtained
18 Defendants’ consent to amend. *See* Fed. R. Civ. P. 15(a)(2). RMCA/Donius have not
19 requested leave to amend the FAC and the parties have not had an opportunity to brief the
20 propriety of adding claims and parties at this late stage in the litigation. *Cf.*
21 *Transcontinental Corp.*, 2009 WL 10710118, at *6 (construing improper third-party
22 complaint as a supplemental counterclaim in part because “a motion for leave [to amend]
23 was not required” in that case). The importance of the parties’ opportunity to be heard on
24 the issue of amendment weighs against construing the TPC as an amended complaint.

25 The Court concludes that construing RMCA/Donius’ improper TPC as an amended
26 complaint would not serve the interests of justice in this case. Third-Party Defendants’
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1 Motions to Dismiss the TPC are granted.¹

2 **III. MOTION FOR ENTRY OF JUDGMENT**

3 RMCA/Donius request that the Court enter judgment on the claims adjudicated in
4 the Summary Judgment Order pursuant to Rule 54(b) of the Federal Rules of Civil
5 Procedure and stay further proceedings. RMCA/Donius contend that “certification will not
6 entail unnecessary appellate review because the summary judgment order ... was based on
7 unique jurisdictional grounds.” (ECF No. 187 at 7). RMCA/Donius contend that the
8 adjudicated claims “are distinct and independent of” the claims in the TPC. (*Id.*).
9 RMCA/Donius contend that further proceedings would not moot appellate review and
10 would not require the Court of Appeals to decide the same issues more than once.
11 RMCA/Donius contend that Defendants will not face any prejudice from an immediate
12 appeal. RMCA/Donius contend that “if this Court does dismiss with prejudice the Third-
13 Party Complaint in its entirety in the near future, it should proceed to enter final judgment
14 in the entire action as to all parties and claims, allowing for an immediate appeal, and deny
15 this Rule 54(b) motion as moot.” (ECF No. 195 at 6).

16 Defendants contend “[t]he prudential path forward is for this Court to enter final
17 judgment in favor of [Defendants and Third-Party Defendants] on all claims, and to allow
18 for a single appeal ... which if affirmed, will avoid the need for further proceedings on
19 remand.” (ECF No. 192 at 4). Defendants contend that allowing an interlocutory appeal
20 “will result in a waste of judicial resources and the resources of the parties, will result in
21 piecemeal appeals, and will leave remaining claims that are logically related to the claims
22 in the interlocutory appeal, both from a factual and legal standpoint.” (*Id.* at 7).

23 Rule 54(b) of the Federal Rules of Civil Procedure states:

24 When an action presents more than one claim for relief ... the court may direct
25 entry of a final judgment as to one or more, but fewer than all, claims ... if the

26
27 ¹ The Court does not address Third-Party Defendants’ alternative arguments in support of dismissal.
28 Accordingly, the parties’ requests for judicial notice (*see* ECF Nos. 186-3, 189-2, 190-2, 197-2) are denied
as unnecessary to this Order.

1 court expressly determines that there is no just reason for delay. Otherwise,
2 any order or other decision, however designated, that adjudicates fewer than
3 all the claims or the rights and liabilities of fewer than all the parties does not
end the action

4 Fed. R. Civ. P. 54(b). To direct entry of a final judgment, “[a] district court must first
5 determine that it is dealing with a ‘final judgment.’” *Curtiss-Wright Corp. v. Gen. Elec.*
6 *Co.*, 446 U.S. 1, 7 (1980). “Once having found finality, the district court must go on to
7 determine whether there is any just reason for delay.” *Id.* at 8. This is a determination that
8 is “left to the sound discretion of the district court.” *Id.* “Thus, in deciding whether there
9 are no just reasons to delay the appeal of individual final judgments ... a district court must
10 take into account judicial administrative interests as well as the equities involved.” *Id.*

11 RMCA/Donius request entry of final judgment as to the claims and counterclaim in
12 this action. The Court granted summary judgment in favor of Defendants on these claims.
13 (*See* ECF No. 176). The Court finds that the Summary Judgment Order is a final judgment
14 because it represents an ultimate disposition of cognizable claims. *See Curtiss-Wright*
15 *Corp.*, 446 U.S. at 7 (stating that a final judgment “must be a ‘judgment’ in the sense that
16 it is a decision upon a cognizable claim for relief, and it must be ‘final’ in the sense that it
17 is an ultimate disposition of an individual claim entered in the course of a multiple claims
18 action.” (quotation omitted)); *Bullard v. Blue Hills Bank*, 575 U.S. 496, 506 (2015) (“An
19 order granting a motion for summary judgment is final”).

20 However, there are no unresolved claims in the action—all claims and counterclaims
21 have been adjudicated and the claims in the TPC have been dismissed. In the absence of
22 any pending claims, interlocutory appeal is improper. *See Curtiss-Wright Corp.*, 446 U.S.
23 at 8 (stating that in determining whether to grant a Rule 54(b) motion, a district court should
24 “consider such factors as whether the claims under review were separable from the others
25 remaining to be adjudicated”). RMCA/Donius’ Motion for Entry of Judgment is denied.

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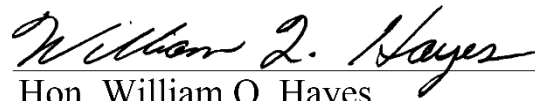
1 **IV. CONCLUSION**

2 IT IS HEREBY ORDERED that the Motions to Dismiss the Third-Party Complaint
3 filed by San Diego Gas & Electric (ECF No. 186), Rincon Band of Luiseno Indians (ECF
4 No. 188), and County of San Diego (ECF No. 189) are granted.

5 IT IS FURTHER ORDERED that the Motion for Entry of Judgment (ECF No. 187)
6 is denied.

7 IT IS FURTHER ORDERED that any motion for leave to amend the First Amended
8 Complaint shall be filed no later than thirty (30) days from the date of this Order. If no
9 motion is filed, the Court will enter judgment.

10 Dated: August 8, 2022


11 Hon. William Q. Hayes
12 United States District Court