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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CINDY ALEGRE et al.,  
Plaintiffs,  
v.  
SALLEY JEWELL, Secretary of the  
Department of Interior, United States of  
America, in her official capacity;  
LAWRENCE ROBERTS, Assistant  
Secretary of the Department of Interior -  
Indian Affairs, United States of America,  
in his official capacity; MICHAEL  
BLACK, Director of the Bureau of Indian  
Affairs of Department of Interior - United  
States of America, in his official capacity;  
AMY DUTSCHKE, Regional Director,  
Department of Interior - Indian Affairs,  
United States of America, in her official  
capacity; JAVIN MOORE,  
Superintendent of the Department of  
Interior Indian Affairs, Southern  
California Agency, in his official capacity;  
DOES 1 through 25; US ATTORNEYS  
OFFICE SOUTHERN CALIFORNIA  
DISTRICT,  
Defendants.

Case No.: 16-CV-2442-AJB-KSC

**ORDER DENYING PLAINTIFFS’  
REQUEST FOR LEAVE TO FILE  
AN AMENDED COMPLAINT**

(Doc. No. 25)

1 Presently before the Court is Plaintiffs’ “request for leave” to file an amended  
2 complaint. (Doc. No. 25.) Defendants have filed a notice stating their intent to oppose  
3 Plaintiffs’ request should the Court entertain it. (Doc. No. 26.) Having reviewed the parties’  
4 submissions and controlling legal authority, and pursuant to Local Civil Rule 7.1.d.1, the  
5 Court finds the matter suitable for decision without oral argument. The Court **DENIES**  
6 Plaintiffs’ request.

### 7 **BACKGROUND**

8 This dispute arises out of Plaintiffs’ contention that they are members of the San  
9 Pasqual Indian Band. Plaintiffs instituted this lawsuit on September 28, 2016, by filing the  
10 original complaint. (Doc. No. 1.) Defendants moved to dismiss that complaint on March  
11 27, 2017. (Doc. No. 9.) In lieu of opposing Defendants’ motion, Plaintiffs filed the  
12 operative amended complaint on April 11, 2017. (Doc. No. 13.) Given the amended  
13 complaint, the Court denied as moot Defendants’ motion. (Doc. No. 14.)

14 On June 12, 2017, Defendants moved to dismiss the amended complaint. (Doc. No.  
15 20.) Plaintiffs were given until June 26, 2017, to oppose the motion. (Doc. No. 21.) Again,  
16 instead of opposing the motion, Plaintiffs filed a second amended complaint on June 26.  
17 (Doc. No. 23.) The same day, the Court struck that order pursuant to Federal Rule of Civil  
18 Procedure 15 for Plaintiffs’ failure to obtain Defendants’ consent or leave of Court.<sup>1</sup> (Doc.  
19 No. 24.) Plaintiffs thereafter filed the instant request for leave of Court to amend the  
20 complaint. (Doc. No. 25.) The next day, Defendants filed a notice of their intent to oppose  
21 Plaintiffs’ request should the Court entertain it. (Doc. No. 26.) This order follows.

### 22 **LEGAL STANDARD**

23 Rule 15(a) governs leave to amend prior to trial. A party may amend its pleading  
24 once as a matter of course within 21 days after serving it; or, if the pleading is one requiring  
25 a response, within 21 days after service of the responsive pleading or motion. Fed. R. Civ.  
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28 <sup>1</sup> All references in this order to “Rules” are to the Federal Rules of Civil Procedure.

1 P. 15(a)(1). “In all other cases, a party may amend its pleading only with the opposing  
2 party’s written consent or the court’s leave. The court should freely give leave when justice  
3 so requires.” Fed. R. Civ. P. 15(a)(2). “Five factors are taken into account to assess the  
4 propriety of a motion for leave to amend: bad faith, undue delay, prejudice to the opposing  
5 party, futility of the amendment, and whether the plaintiff has previously amended the  
6 complaint.” *Desertrain v. City of L.A.*, 754 F.3d 1147, 1154 (9th Cir. 2014) (quoting  
7 *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004)). These factors do not “merit  
8 equal weight,” and “it is the consideration of prejudice to the opposing party that carries  
9 the greatest weight.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.  
10 2003) (per curiam). “Absent prejudice, or a strong showing of any of the remaining []  
11 factors, there exists a *presumption* under Rule 15(a) in favor of granting leave to amend.”  
12 *Id.* (emphasis in original).

13 The grant or denial of leave to amend is in the Court’s discretion. *Swanson v. U.S.*  
14 *Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). “In exercising this discretion, a court must  
15 be guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather  
16 than on the pleadings or technicalities.” *United States v. Webb*, 655 F.2d 977, 979 (9th Cir.  
17 1981). Consequently, the policy in favor of granting leave to amend is applied with extreme  
18 liberality. *See Foman v. Davis*, 371 U.S. 178, 181–82 (1962).

### 19 DISCUSSION

20 The Court finds that the weight of the *Desertrain* factors supports denying Plaintiffs’  
21 request. While the Court “should freely give leave when justice so requires,” justice will  
22 not be had if Plaintiffs’ request is granted. This is the second time Plaintiffs, when faced  
23 with a motion to dismiss, strategically filed an amended complaint instead of opposing  
24 Defendants’ arguments on the merits. This suggests bad faith. This fact is also relevant to  
25 the fifth factor, specifically, whether Plaintiffs have previously amended the complaint  
26 (they have). Furthermore, the complaints in this case are substantial. Defendants undertook  
27 significant efforts to research and draft a succinct motion to dismiss in the face of a  
28 complaint that exceeds 800 pages. To summarily deny Defendants’ motion on the basis of

1 Plaintiffs' filing (again) would be prejudicial to Defendants. As such, this factor strongly  
2 favors denying Plaintiffs' request. Because prejudice to Defendants is accorded the greatest  
3 weight, and because there is a strong showing on three of the five factors, the Court  
4 exercises its discretion and **DENIES** Plaintiffs' request.<sup>2</sup>

5 **CONCLUSION**

6 Based on the foregoing, the Court **DENIES** Plaintiffs' request. At this juncture, the  
7 Court finds it appropriate to proceed with Defendants' motion to dismiss. The Court *sua*  
8 *sponte* extends the briefing schedule on that motion. Plaintiffs' opposition is due no later  
9 than **July 12, 2017**. Defendants' reply is due **July 29, 2017**. No further extensions will be  
10 given. Pursuant to the Court's prior order, Plaintiffs' opposition may not exceed 35 pages.  
11 Defendants' reply may not exceed 15 pages. The hearing on this motion remains **August**  
12 **10, 2017, at 2:00 p.m. in Courtroom 4A.**

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14 **IT IS SO ORDERED.**

15 Dated: June 27, 2017

16   
17 Hon. Anthony J. Battaglia  
18 United States District Judge  
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27 <sup>2</sup> And finally, a Rule 15(a)(2) motion must be brought by noticed motion. Plaintiffs neither  
28 contacted chambers to schedule their motion nor briefed the legal authority governing their  
request.