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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 WILLIAMS & COCHRANE, LLP, et al.,  
12 Plaintiffs,  
13 v.  
14 QUECHAN TRIBE OF THE FORT  
15 YUMA INDIAN RESERVATION, et al.,  
16 Defendants.

Case No.: 3:17-cv-01436-GPC-MDD

**ORDER:**

(1) **DENYING MOTION TO STRIKE  
[ECF No. 95]; and**  
  
(2) **DENYING MOTION FOR LEAVE  
TO FILE THIRD AMENDED  
COMPLAINT [ECF No. 105]**

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19 On June 7, 2018, the Court granted in part and denied in part motions to dismiss  
20 the First Amended Complaint (“FAC”) in this case. (ECF No. 89.) The Court granted  
21 Plaintiffs leave to amend. (*Id.* at 38.) Before Plaintiffs filed a second amended  
22 complaint, Defendant Quechan Tribe of the Fort Yuma Indian Reservation filed an  
23 answer to the FAC with counterclaims against Plaintiff Williams & Cochrane. (ECF No.  
24 94.) Williams & Cochrane has moved to strike that answer. (ECF No. 95.) Plaintiffs  
25 have also since filed a Second Amended Complaint (“SAC”) (ECF No. 100), and a  
26 motion for leave to file a third amended complaint (ECF No. 105-1). For the reasons set  
27 forth below, the Court denies both of Plaintiffs’ motions.

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1       **I.       Background**

2           In its previous ruling on Defendants’ motions to dismiss the FAC, the Court  
3 detailed the wide-ranging allegations in this case. (ECF No. 89 at 2–13.) The Court will  
4 not repeat that level of detail here.

5           This lawsuit involves two categories of claims. The first category contains claims  
6 by Plaintiff Williams & Cochrane (“W&C”) against (1) its former client Quechan Tribe  
7 of the Fort Yuma Indian Reservation (“Quechan,” or the “Quechan Tribe”), members of  
8 Quechan’s leadership Keeny Escalanti, Sr., and Mark William White (collectively, with  
9 Quechan, the “Quechan Defendants”), and (3) attorneys Robert Rosette and Richard  
10 Armstrong and their law firm organizations (collectively, the “Rosette Defendants”).  
11 According to the allegations, Rosette represented the Pauma Band of Mission Indians  
12 (“Pauma”) in litigation against the State of California over a gaming compact. At the  
13 time, the attorneys that now make up W&C, Cheryl Williams and Kevin Cochrane,  
14 worked for Rosette, and they handled the vast majority of Pauma’s litigation. After  
15 Williams and Cochrane left Rosette’s firm to create W&C, Pauma chose to hire W&C to  
16 complete their litigation, which ended in Pauma’s favor. Despite Williams and  
17 Cochrane’s performing the vast majority of the work in Pauma’s case, Rosette advertises  
18 that he is responsible for Pauma’s litigation success.

19           After hearing about Pauma’s success, Quechan hired W&C to resolve a similar  
20 dispute with the State of California. W&C and Quechan signed a fee agreement  
21 containing two relevant provisions. First, in Section 5 of the agreement, Quechan agreed  
22 to pay W&C a contingency fee based on a proportion of Quechan’s “net recovery” after  
23 the conclusion of its dispute with California. Second, in Section 11 of the agreement, the  
24 parties agreed that while Quechan could fire W&C at any time, if it did so prior to  
25 Quechan becoming “entitled to” any of the net recovery envisioned in Section 5,  
26 Quechan was obligated to pay W&C a reasonable fee based on various factors. After the  
27 parties signed this agreement, W&C engaged in negotiations with the State on Quechan’s  
28 behalf. Just days before Quechan was set to sign a new compact with California,

1 however, Quechan sent W&C a letter firing W&C as its counsel. In the letter, Quechan  
2 indicated that it would not pay W&C *any* fee, even the fee envisioned in Section 11. The  
3 letter stated that Quechan would now be represented by Rosette’s firm.

4 A few months later, Quechan—represented by Rosette—finalized a compact with  
5 California that, according to Plaintiffs, was significantly less advantageous for Quechan  
6 than the agreement W&C had reached prior to being fired. Based on the allegations just  
7 described, W&C asserts claims of (1) breach of contract and the implied covenant of  
8 good faith and fair dealing against the Quechan Defendants, and (2) Lanham Act and  
9 RICO violations against the Rosette Defendants, Escalanti, and White.

10 The second category of claims (or claim, really) in this suit is an allegation of  
11 malpractice by a putative class of members of the Quechan Tribe against the Rosette  
12 Defendants. They allege that the Rosette Defendants negligently handled Quechan’s  
13 negotiations with California.

14 The Proposed Third Amended Complaint (“PTAC”) seeks to add a claim of  
15 “intentional interference with contract/prospective economic advantage” by W&C against  
16 the Rosette Defendants and new proposed defendants Christopher Casamassima—who  
17 represents the Quechan Defendants in this case—and Casamassima’s law firm Wilmer  
18 Cutler Pickering Hale and Dorr LLP (“WilmerHale”). (ECF No. 105-2 at 81–84.<sup>1</sup>) The  
19 PTAC alleges that these defendants have intentionally interfered with W&C’s  
20 relationships with Quechan and Pauma. With respect to Quechan, the PTAC alleges that  
21 (1) during a June 16, 2017 meeting with Escalanti and White, Rosette learned that W&C  
22 was representing Quechan; (2) Rosette then “solicited taking over the California compact  
23 negotiation work using representations and promotional materials he maintains in the  
24 ordinary course of business that erroneously claim he is responsible for successfully  
25 litigating the *Pauma* lawsuit on which the Quechan work was in part based”; and (3) this  
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28 <sup>1</sup> References to specific pages in the record correspond with the pagination provided by the CM/ECF system.

1 caused Quechan to repudiate its fee agreement days before Quechan was set to complete  
2 their compact negotiation with California. (*Id.* at 82–83 ¶ 245.)

3 With respect to W&C’s relationship with Pauma, the PTAC alleges that Rosette  
4 and “the attorneys with WilmerHale” have been “targeting” Pauma. (*Id.* at 83 ¶ 246.)  
5 These efforts include “undo[ing] the sealing orders in this case” by (1) filing a declaration  
6 by California negotiator Joe Dhillon in which he disclosed “all of the confidential  
7 negotiation materials [W&C] transmitted to the State during the course of the  
8 negotiations,” and (2) “disseminating” an unredacted version of the otherwise sealed  
9 operative complaint in this case “to at least two individuals affiliated with Pauma.” (*Id.*)  
10 The PTAC also claims that these defendants filed a “premature” answer to the FAC—  
11 which, as discussed above, was filed after the Court’s ruling on the motions to dismiss  
12 the FAC, but before Plaintiffs filed the SAC—that contains “a slew of punitive cross  
13 claims, which [the defendants] then relayed, or caused to be relayed, to Pauma tribal  
14 members with the message that such claims are definitive proof that [W&C] acted in an  
15 unethical manner in connection with its representation of Quechan.” (*Id.*; *see also id.* at  
16 55–58 ¶¶ 169–78.) These actions have “resulted in Pauma scheduling an imminent  
17 meeting to discuss [W&C]’s employment future with” Pauma. (*Id.* at 83 ¶ 246.)  
18 According to Plaintiffs, “[e]ven if this special meeting does not result in termination, the  
19 actions by Robert Rosette and WilmerHale have so tainted the waters at Pauma that  
20 [W&C]’s relationship with the tribe is likely irreparably damaged, and one that is now  
21 unlikely to continue long term.” (*Id.* at 57–58 ¶ 178.)

## 22 **II. Motion to Amend**

### 23 **A. Legal Standard**

24 Federal Rule of Civil Procedure 15(a)(2) provides that after a party has amended  
25 its pleading as a matter of course, the party may only amend its pleading “with the  
26 opposing party’s written consent or the court’s leave.” When the Court is asked for leave  
27 to amend a complaint, the Court “should freely give leave when justice so requires.” *Id.*  
28 Courts in this circuit must apply “extreme liberality” to requests for leave to amend a

1 complaint. *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1154 (9th Cir. 2014). The  
2 Court nonetheless must consider five factors “to assess the propriety of a motion for leave  
3 to amend: bad faith, undue delay, prejudice to the opposing party, futility of amendment,  
4 and whether the plaintiff has previously amended the complaint.” *Id.* (quoting *Johnson v.*  
5 *Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004)). With respect to futility, while courts  
6 ordinarily do not engage in a full application of the Rule 12(b)(6) standard to determine  
7 whether the proposed amendment states a plausible claim for relief, *e.g.*, *TV Ears, Inc. v.*  
8 *SYK Grp., LLC*, No. 16-cv-867-GPC-WVG, 2016 WL 7336623, at \*2 (S.D. Cal. Dec. 19,  
9 2016), “the validity of the proposed amended pleading is at the heart of the futility  
10 analysis,” *Gaitan v. Mortg. Elec. Registration Sys.*, No. EDCV 09-10009 VAP (MANx),  
11 2009 WL 3244729, \*4 (C.D. Cal. Oct. 5, 2009).

## 12 **B. Discussion**

13 Defendants’ arguments against the motion to amend sound mainly in futility and  
14 prejudice. Because the Court agrees that the proposed amendment in the PTAC is futile,  
15 it need not consider Defendants’ prejudice arguments.

16 To state a claim for tortious interference of contract, a plaintiff must plead (1) “a  
17 valid contract between plaintiff and a third party”; (2) “defendant’s knowledge of this  
18 contract”; (3) “defendant’s intentional acts designed to induce a breach or disruption of  
19 the contractual relationship”; (4) “actual breach or disruption of the contractual  
20 relationship”; and (5) “resulting damage.” *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*,  
21 791 P.2d 587, 589–90 (Cal. 1990). “The tort of interference with prospective economic  
22 advantage protects the same interest in stable economic relationships as does the tort of  
23 interference with contract, though interference with prospective advantage does not  
24 require proof of a legally binding contract.” *Id.* at 590. To state a claim for tortious  
25 interference with prospective economic advantage, a plaintiff must plead (1) “an  
26 economic relationship between the plaintiff and some third party, with the probability of  
27 future economic benefit to the plaintiff”; (2) “the defendant’s knowledge of the  
28 relationship”; (3) “intentional acts on the part of the defendant designed to disrupt the

1 relationship”; (4) “actual disruption of the relationship”; and (5) “economic harm to the  
2 plaintiff proximately caused by the acts of the defendant.” *Id.* at 590 n.2.

3 **i. W&C’s Relationship with Pauma**

4 As an initial matter, it is clear that adding W&C’s intentional interference claim  
5 with respect to alleged interference with W&C’s relationship with Pauma, as proposed,  
6 would be futile. The only allegations in the PTAC that suggest any harm to that  
7 relationship are that (1) Pauma has called a meeting to discuss its relationship with W&C,  
8 (2) the “waters” of the relationship between W&C and Pauma have been “tainted,” and  
9 (3) the relationship is “likely irreparably damaged.” (ECF No. 105-2 at 57–58 ¶¶ 177,  
10 178.) With respect to the first allegation, the fact that a meeting has been called does not  
11 suggest that Pauma will, with any level of appreciable certainty, decide to terminate  
12 W&C as its counsel. As for the latter two allegations, they are much too vague to suggest  
13 any type of harm. *Cf. Blantz v. Cal. Dep’t of Corrs. & Rehab.*, 727 F.3d 917, 927 (9th  
14 Cir. 2013) (affirming denial of leave to amend because the proposed allegations were too  
15 conclusory to survive the Rule 12(b)(6) standard).<sup>2</sup>

16 Of course, if in the future Pauma severs ties with W&C or that relationship is  
17 harmed in some concrete way, W&C might be able to satisfy the harm elements of the  
18 interference with contract or economic advantage claims. But the Court will not permit  
19 W&C to add a claim premised on events that have not yet occurred. Thus, the Court will  
20 deny leave to amend as to this aspect of the interference claim without prejudice to W&C  
21 reasserting it in the event that concrete harm to this relationship occurs.

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25 <sup>2</sup> Because the Court finds that adding this aspect of the interference claim would be futile on the ground  
26 that no damage is adequately alleged, it is unnecessary to reach the parties’ arguments over whether the  
27 litigation privilege applies to this aspect of the claim. It should be noted, however, that the validity of  
28 one of the decisions relied upon by Plaintiffs in resisting the application of that privilege, *Cutter v.*  
*Brownbridge*, 228 Cal. Rptr. 545 (Ct. App. 1986), has been seriously called into question by an  
intervening decision of the Supreme Court of California, *see Jacob B. v. Cty. of Shasta*, 154 P.3d 1003  
(Cal. 2007).

1                                   **ii. W&C’s Relationship with Quechan**

2           While a closer question, adding an intentional interference claim with respect to  
3 alleged interference with W&C’s relationship with Quechan would also be futile because  
4 the Rosette Defendants’ actions, as alleged, fall within California’s statutory litigation  
5 privilege. California Civil Code 47(b) immunizes, in relevant part, “publications” or  
6 “broadcasts” in any “judicial proceeding.” Despite its brevity, Section 47(b)’s breadth  
7 “cannot be understated.” *Finton Constr. Inc. v. Bidna & Keys, APLC*, 190 Cal. Rptr. 3d  
8 1, 10–11 (Ct. App. 2015). It is a codification of a longstanding common-law immunity  
9 for “communications with ‘some relation’ to judicial proceedings.” *Rubin v. Green*, 847  
10 P.2d 1044, 1047 (Cal. 1993). The purpose of this immunity is to protect access to the  
11 courts and maximize litigants’ abilities to “secure and defend their rights.” *Id.* It also  
12 encourages an attorney to zealously protect her clients’ interests by protecting the  
13 attorney “from the fear of subsequent derivative actions for communications made in the  
14 context of judicial proceedings.” *Edwards v. Centex Real Estate Corp.*, 61 Cal. Rptr. 2d  
15 518, 527 (Ct. App. 1997). “California courts have given the privilege an expansive  
16 reach, and held that the privilege is absolute, even if the result is inequitable”; “any doubt  
17 as to whether the privilege applies is resolved in favor of applying it.” *Morales v. Coop.*  
18 *of Am. Physicians, Inc., Mut. Prot. Tr.*, 180 F.3d 1060, 1062 (9th Cir. 1999) (citation  
19 omitted). The litigation privilege immunizes defendants “from tort liability based on  
20 theories of . . . intentional inducement of breach of contract [and] intentional interference  
21 with prospective economic advantage.” *Silberg v. Anderson*, 786 P.2d 365, 371 (Cal.  
22 1990) (citations omitted).

23           In *Rubin*, the Supreme Court of California held that the litigation privilege  
24 precludes contract-interference claims resulting from attorneys’ unlawful solicitation of  
25 clients. There, Rubin—part owner of a mobile home park—sued Green—an attorney and  
26 resident of the same park—and her law firm for illegally soliciting park residents to join a  
27 suit against Green. 847 P.2d at 1045–46. The court first held that Green and her firm’s  
28 solicitations of the residents were protected by the privilege: “[w]hether these acts

1 amounted to wrongful attorney solicitation or not, they were communicative in their  
2 essential nature and therefore within the privilege of section 47(b).” *Id.* at 1049. The  
3 court then considered “the extent of that protection,” and determined that Rubin’s claims,  
4 including the claim for intentional interference with contract, could not proceed. *See id.*  
5 at 1053 (“[T]he conduct of defendants alleged in the complaint is . . . absolutely immune  
6 from civil tort liability, including plaintiff’s interference with contract and related  
7 claims.”). In reaching that conclusion, the court balanced the “utility of permitting a  
8 litigant in a civil action to maintain an unlawful solicitation claim against the attorneys  
9 for the opposing party against the untoward effects of such a proceeding on the  
10 administration of civil justice.” *Id.* at 1050. It noted that permitting such claims would  
11 disrupt access to counsel, intimidate and distract attorneys, and “dampen” the  
12 “unobstructed presentation of claims which we have identified as the central value  
13 supporting limitations on other derivative tort actions.” *Id.* What’s more, permitting  
14 Rubin’s suit to punish illegal solicitation would have “marginal” value because other  
15 protections against such conduct existed: (1) California’s criminalization of “solicitation  
16 through the use of ‘runners’ or ‘cappers,’” and (2) the state bar’s power to discipline  
17 attorneys who engage in misconduct. *Id.* at 1050–51. The court expressly rejected  
18 Rubin’s argument that these alternate enforcement routes were inadequate to prevent  
19 attorney misconduct; according to the court, the answer to that problem was not to  
20 encourage litigation like Rubin’s. *Id.* at 1051 (“[I]t does not follow that we should adopt  
21 a remedy that itself encourages a spiral of lawsuits.”).

22 Here, of course, the circumstances of W&C’s intentional interference claim differ  
23 from those in *Rubin* because the Rosette Defendants and W&C were not opposing  
24 counsel in some other litigation. Rather, according to W&C, Rosette Defendants took  
25 W&C’s client using misrepresentations. But that makes no difference with respect to the  
26 litigation privilege. *Olsen v. Harbison*, 119 Cal. Rptr. 3d 460, 469 (Ct. App. 2010)  
27 (“Plaintiff asserts that the trial court erred in granting summary adjudication on his cause  
28 of action for intentional interference with contractual relations because defendant and



1 plaintiff were not adverse parties at the time defendant made his statements. *The*  
2 *litigation privilege does not include such a requirement.*” (emphasis added)). Permitting  
3 W&C’s suit under these circumstances would have the same adverse effects discussed in  
4 *Rubin*: it would make it more difficult for a litigant (or potential litigant) receiving bad  
5 legal advice from obtaining better counsel, because that better counsel would be  
6 “intimidated” and “distracted” by the threats of action by the litigant’s current counsel.  
7 Moreover, the value of permitting such a claim would, just as in *Rubin*, be marginal. If  
8 the Rosette Defendants lied to Quechan in order to get its business, the state bar surely  
9 can take action against the Rosette Defendants. And as the Court has previously found,  
10 Plaintiffs may pursue an action under the Lanham Act against the Rosette Defendants for  
11 putting false information about Rosette’s accomplishments in their advertisements. The  
12 fact that these alternative means of policing the Rosette Defendants’ conduct might not  
13 be perfect, as the *Rubin* court explained, does not warrant allowing W&C’s intentional  
14 interference claim.

15 This reasoning led the court in *Grant & Eisenhofer, P.A. v. Brown*, No. CV 17-  
16 5968 PSG (PJWx), 2017 WL 6343506 (C.D. Cal. Dec. 6, 2017), to reach the same  
17 conclusion under analogous facts. There, the plaintiff-law-firm (“G&E”) sued its former  
18 client and other attorneys after the client refused to pay G&E its fee after the client  
19 reached a substantial settlement. *Id.* at \*1. G&E brought an interference claim against  
20 the defendant-attorneys, who G&E claimed “continue[d] to interfere with [the client’s]  
21 obligation to share with G&E” the fees to which G&E was entitled. *Id.* at \*2.  
22 Addressing an anti-SLAPP motion by the defendant-attorneys, the court found that G&E  
23 had no probability of prevailing on its interference claim because the defendant-  
24 attorneys’ actions were immunized by California’s litigation privilege. *Id.* at \*5–7. The  
25 court explained:

26 A cornerstone of any client’s rights is the ability to select counsel of her  
27 choosing. As underhanded as the actions of [defendant-attorneys] may have  
28 been, communications and related acts in service of a client’s selection of  
the best possible lawyer for her case is the sort of activity that falls within

1 the ambit of both the anti-SLAPP statute and the litigation privilege.

2 *Id.* at \*7 (internal quotation marks omitted). *Grant* took significant guidance from *Olsen*,  
3 in which the Court of Appeal held that the privilege applied under analogous facts.

4 There, after plaintiff and defendant—both attorneys—signed a fee-sharing arrangement  
5 for their representation of a single client, the client fired plaintiff and kept defendant as  
6 her sole counsel. 119 Cal. Rptr. 3d at 463. After the client settled the case a few weeks  
7 later, she refused to pay plaintiff any fee. *Id.* Plaintiff brought a claim against defendant  
8 for, *inter alia*, intentional interference of contract. *Id.* The Court of Appeal affirmed the  
9 trial court’s conclusion that the litigation privilege applied and precluded this claim. *Id.*  
10 at 469–70.

11 Plaintiffs respond with two arguments, neither of which are persuasive. First, they  
12 attempt to cast the Rosette Defendants’ actions as “conduct,” rather than communication.  
13 The *Rubin* court rejected the same exact argument. It explained:

14 Nor does the fact that defendants’ communications with the [park] residents  
15 necessarily involved related acts destroy the privilege. . . . Judging from the  
16 allegations of the amended complaint, plaintiff’s claims, however styled, are  
17 founded essentially upon alleged misrepresentations made by the law firm  
18 (and Green) to [park] residents in the course of discussions over park  
19 conditions and the possibility of being retained to prosecute the failure-to-  
20 maintain action, and the subsequent filing of pleadings in the lawsuit itself.  
Whether these acts amounted to wrongful attorney solicitation or not, they  
were communicative in their essential nature and therefore within the  
privilege of section 47(b).

21 847 P.2d at 1048–49 (citations omitted). The same applies here: the Rosette Defendants  
22 engaged in communication when they allegedly convinced Quechan to cut ties with  
23 W&C in their negotiations with California. Plaintiffs also attempt to cast these actions—  
24 soliciting Quechan to fire W&C and hire Rosette—simply as “false commercial  
25 advertising,” thereby suggesting that Rosette never actually spoke or personally solicited  
26 Quechan’s business. But the SAC’s allegations belie this assertion. According to the  
27 SAC, Rosette met with Defendants White and Escalanti and convinced them to fire W&C  
28 and hire Rosette to complete Quechan’s negotiations with California. (SAC ¶¶ 180–88.)

1 These are undoubtedly communications; under *Rubin*, they fall within the litigation  
2 privilege.

3 Second, Plaintiffs argue that because the Rosette Defendants' solicitation of  
4 Quechan was unlawful and also violated California's Rules of Professional Conduct, it is  
5 not covered by the privilege. (ECF No. 124 at 8.) But, as just noted above, *Rubin* makes  
6 clear that even unlawful communications are covered by the litigation privilege. 847  
7 P.2d at 1049 ("Whether these acts amounted to wrongful attorney solicitation or not, they  
8 were communicative in their essential nature and therefore within the privilege of section  
9 47(b)."). In support of their position, Plaintiffs cite *Coretronic Corp. v. Cozen*  
10 *O'Connor*, 121 Cal. Rptr. 3d 254 (Ct. App. 2011), *Gaynor v. Bulen*, 228 Cal. Rptr. 3d  
11 243 (Ct. App. 2018), and *Chodos v. Cole*, 148 Cal. Rptr. 3d 451 (Ct. App. 2012),  
12 asserting that these decision held that unlawful activity is not "protected." But these  
13 decisions dealt with the protections of California's anti-SLAPP law, which enables  
14 defendants to strike causes of action that implicate defendants' constitutional rights to  
15 free speech and petitioning activity. See Cal. Code Civ. Proc. § 425.16(b)(1) ("A cause  
16 of action against a person arising from any act of that person in furtherance of the  
17 person's right of petition or free speech under the United States Constitution or the  
18 California Constitution in connection with a public issue shall be subject to a special  
19 motion to strike, unless the court determines that the plaintiff has established that there is  
20 a probability that the plaintiff will prevail on the claim."). In *Coretronic*, *Gaynor*, and  
21 *Chodos*, the courts held that the anti-SLAPP law could not operate in those cases because  
22 the defendants' conduct did not fall within their *constitutional rights to free speech or to*  
23 *petition the government*. That determination is distinct from the issue of whether  
24 communications are privileged under California's statutory litigation privilege.

25 It is clear that the litigation privilege immunizes the Rosette Defendants' actions in  
26 soliciting Quechan to fire W&C and hire Rosette to complete the negotiations with  
27 California. With respect to this aspect of the intentional interference claim, there is "no  
28 set of facts [that] can be proved under the amendment to the pleadings that would

1 constitute a valid and sufficient claim.” *Miller v. Rykof-Sexton, Inc.*, 845 F.2d 209, 214  
2 (9th Cir. 1998). As a result, the Court denies, with prejudice, leave to add this aspect of  
3 the proposed interference claim.

### 4 **III. Motion to Strike**

5 After the Court issued its first motion to dismiss ruling in this case, but before  
6 Plaintiffs filed the SAC, Quechan filed an answer to the FAC that included several  
7 counterclaims against W&C. (ECF No. 94.) Plaintiffs have filed a motion to strike that  
8 filing. (ECF No. 95.) According to Plaintiffs, Quechan’s answer was procedurally  
9 improper because at the time Quechan filed it, the Court was considering a motion by  
10 Plaintiffs for leave to file a supplemental complaint. Regardless of whether it was  
11 improper for Quechan to file that answer, striking the answer is not appropriate under  
12 these circumstances. Federal Rule of Civil Procedure 12(f) allows the Court to strike  
13 “from a pleading an insufficient defense or any redundant, immaterial, impertinent, or  
14 scandalous matter.” Quechan’s answer is not redundant, immaterial, impertinent, or  
15 scandalous. Moreover, motions to strike are generally disfavored. *See Petrie v. Elec.*  
16 *Game Card, Inc.*, 761 F.3d 959, 965 (9th Cir. 2014).

17 The procedural posture of this case does raise the question of whether W&C must  
18 answer Quechan’s counterclaims even though W&C has since filed the SAC. The  
19 answer is yes. Despite W&C’s filing of the SAC, Quechan’s counterclaims are currently  
20 operative. A plaintiff’s filing of an amended complaint does not moot a counterclaim  
21 alleged within an answer to the original complaint. *See Hayden v. Ariz. Pool & Fountain*  
22 *Guys, LLC*, No. CV-16-00840-PHX-SRB, 2016 WL 9456363, at \*1 (D. Ariz. Aug. 2,  
23 2016) (because “[w]hile an amendment to a complaint requires revisions to answer, it  
24 does not necessitate revisions to a counterclaim,” counterclaims are not “mooted by [an]  
25 Amended Complaint”). Regardless of what happens to W&C’s claims, Quechan’s  
26 counterclaims have been asserted and must be answered. The Court will give W&C 14  
27 days from the date this order is issued to file an answer to Quechan’s counterclaims.

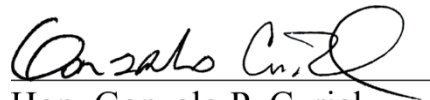
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1       **IV. Conclusion**

2           In sum, the Court concludes that permitting Plaintiffs to file the Proposed Third  
3 Amended Complaint would be futile. With respect to the proposed claim regarding  
4 intentional interference with W&C’s relationship with Pauma, the Court denies leave to  
5 amend without prejudice. With respect to alleged interference with W&C’s relationship  
6 with Quechan, however, the Court denies leave to amend with prejudice. The Court also  
7 concludes that striking Quechan’s answer to the FAC is inappropriate. Within 14 days,  
8 W&C must file an answer to Quechan’s counterclaims. (*See* ECF No. 94 at 15–24.)

9           **IT IS SO ORDERED.**

10 Dated: August 20, 2018

  
11 Hon. Gonzalo P. Curiel  
12 United States District Judge