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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAMS & COCHRANE, LLP, et al.,
Plaintiffs,
v.
QUECHAN TRIBE OF THE FORT YUMA
INDIAN RESERVATION, et al.,
Defendants.

AND ALL RELATED COUNTER CLAIMS

Case No.: 17cv1436-GPC (MSB)

**ORDER ON JOINT MOTIONS FOR
DETERMINATION OF DISCOVERY
DISPUTES RE:
(1) QUECHAN’S PRIVILEGE LOG
[ECF NO. 271];
(2) ROSETTE DEFENDANTS’ PRIVILEGE
LOG [ECF NO. 272]; AND
(3) ROSETTE DEFENDANTS’ ALLEGED
FAILURE TO COMPLY WITH FEBRUARY 4,
2020 ORDER [ECF NO. 274]**

On April 16, 2020, the Court held a telephonic Discovery Hearing with counsel for all parties to address their Joint Motions for Determination of Discovery Dispute, filed on March 5, 2020, (ECF Nos. 271, 272), and March 18, 2020 (ECF No. 274).¹ For the reasons stated on the record at the hearing, the Court **ORDERS** as follows²:

¹ Plaintiff confirmed prior to the hearing that ECF Nos. 271 and 272 were intended to replace ECF Nos. 269 and 270, and represented that Plaintiff would file a motion to withdraw ECF Nos. 269 and 270.

² The organization of this order mirrors the organization of the three motions submitted by the parties, addressing each motion in the order filed, and each issue as raised in each of the motions.

1 1. Regarding **ECF No. 271**, wherein Plaintiff objects to the Quechan Tribe of the Fort
2 Yuma Indian Reservation's ("Quechan's") assertions of privilege in its privilege log:

3 a. The Court **OVERRULES** Plaintiff's objection and finds that Quechan has not
4 waived any attorney-client privilege asserted in its privilege log through its
5 counterclaims, affirmative defenses, or damages request.

6 b. The Court **OVERRULES** Plaintiff's objection and finds that the crime-fraud
7 exception is inapplicable and does not waive Quechan's attorney-client privilege as
8 asserted in its privilege log.

9 c. The Court **OVERRULES** Plaintiff's objection and finds no waiver of
10 Quechan's attorney-client privilege based on "successor attorney's animus."

11 d. The Court **OVERRULES** Plaintiff's objection and finds that the challenged
12 communications between Quechan and its attorneys, providing/seeking information for
13 the purpose of obtaining legal advice or conveying legal advice, prior to formal retention
14 of such attorneys are protected within the attorney-client privilege.

15 e. The Court **OVERRULES** Plaintiff's objection and finds the August 23, 2017
16 email and attachment at numbers 158 and 159 of Quechan's privilege log were within
17 the attorney-client privilege.

18 f. (This entry was marked as a second "e" in the Joint Motion for
19 Determination of Discovery Dispute.) Plaintiff **WITHDREW without prejudice** its
20 assertion that Quechan waived privilege as to all documents Quechan strategically
21 omitted from the log.

22 g. The Court finds the information presently before it insufficient for the Court
23 to determine whether the identified emails and documents exchanged within Quechan
24 are protected by attorney-client privilege. No later than **April 27, 2020**, the Court
25 **ORDERS** Quechan to, for the privilege log items identified in section G of ECF No. 271,
26 provide declarations from people with knowledge describing (1) the roles and
27 responsibilities of the individuals from Quechan who are associated with each
28 document, and (2) why Quechan asserts their access either furthered the interests of

1 Quechan or was necessary for the transmission of the information or the
2 accomplishment of the purpose for which the lawyer was consulted.

3 h. The Court finds the information presently before it insufficient for the Court
4 to determine whether the identified emails and attachments sent between Rosette
5 Defendants and non-tribal council members at Quechan are protected by attorney-
6 client privilege. No later than **April 27, 2020**, the Court **ORDERS** Quechan to, for the
7 privilege log items identified in section H of ECF No. 271, provide declarations describing
8 (1) the roles and responsibilities of the individuals from Quechan who are associated
9 with each document, and (2) why Quechan asserts their access either furthered the
10 interests of Quechan or was necessary for the transmission of the information or the
11 accomplishment of the purpose for which the lawyer was consulted.

12 i. The Court finds the information presently before it insufficient for the Court
13 to determine whether the identified documents and communications between Quechan
14 and non-attorney employees with the Rosette Defendants are protected by the
15 attorney-client privilege. No later than **April 27, 2020**, the Court **ORDERS** Quechan to,
16 for the privilege log items identified in section I of ECF No. 271, provide declarations
17 describing (1) the roles and responsibilities of the individuals from Rosette who are
18 associated with each document, and (2) why Quechan asserts their access either
19 furthered the interests of Quechan or was necessary for the transmission of the
20 information or the accomplishment of the purpose for which the lawyer was consulted.

21 j. The Court **OVERRULES** Plaintiff's objection to the application of the
22 attorney-client privilege to the documents identified in section J of ECF No. 271 based
23 on the nature of those documents. The Court finds such documents and
24 communications are within the attorney-client privilege, so long as the parties sending
25 and receiving the emails and documents at-issue are within the privilege.

26 2. **Regarding ECF No. 272**, wherein Plaintiff objects to Defendants Robert Rosette,
27 Rosette & Associates, PC and Rosette, LLP's ("Rosette Defendants") assertions of
28 privilege in their privilege log:

1 a. The Court **OVERRULES** Plaintiff's objection and finds that Quechan has not
2 waived any attorney-client privilege as asserted in the Rosette Defendants' privilege log
3 through its counterclaims, affirmative defenses, or damages request. The Court further
4 finds that attorney-client privilege applies to communications between lawyers at
5 Rosette Defendants that were made for the purpose of representing Quechan.

6 b. The Court **OVERRULES** Plaintiff's objection and finds that the crime-fraud
7 exception is inapplicable and does not waive Quechan's attorney-client privilege as
8 asserted in the Rosette Defendants' privilege log.

9 c. The Court **OVERRULES** Plaintiff's objection and finds no waiver of
10 Quechan's attorney-client privilege based on "successor attorney's animus."

11 d. The Court **OVERRULES** Plaintiff's objection and finds that the challenged
12 communications between Quechan and Rosette Defendants are not unprotected by the
13 attorney-client privilege simply because they were made prior to Quechan's formal
14 retention of Rosette.

15 e. The Court **OVERRULES** Plaintiff's objection and finds that the identified
16 emails and attachments in section E of ECF No. 272 fall within the attorney-client
17 privilege.

18 f. The Court **OVERRULES** Plaintiff's objection **in part** and finds Rosette
19 Defendants' privilege description categories 1 and 3-5 identified by Plaintiff in section F
20 of ECF No. 172 sufficient to support a finding of attorney-client privilege, so long as the
21 parties to the communications are within the privilege. However, as to category
22 number 2, no later than April 27, 2020, the Court **ORDERS** the Rosette Defendants to
23 submit a declaration from a person with knowledge setting forth the facts upon which
24 the Rosette Defendants assert that the documents which were previously described as
25 "regarding gaming compact negotiations, ratification, and/or potential litigation
26 between Quechan and California" are subject to attorney-client privilege.

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1 g. The Court has no reason to doubt Rosette Defendants' counsel's
2 representations about the reasons for the amendments to these entries in Rosette
3 Defendants' privilege log. Based on the Court's understanding of the parties'
4 arguments, there are currently no communications between Rosette Defendants and
5 Pauma from a time when Rosette Defendants did not represent Pauma for any reason
6 that would be subject to this argument. The Court therefore **OVERRULES** Plaintiff's
7 objection and finds the identified documents are protected by attorney-client privilege.

8 h. The Court finds the information presently before it insufficient for the Court
9 to determine whether the identified emails and attachments sent between Rosette
10 Defendants and non-tribal council members at Quechan are protected by attorney-
11 client privilege. No later than **April 27, 2020**, the Court **ORDERS** Rosette Defendants³ to,
12 for the privilege log items identified in section H of ECF No. 272, provide declarations
13 describing (1) the roles and responsibilities of the individuals from Quechan who are
14 associated with each document, and (2) why access to those individuals at Quechan
15 either furthered the interests of Quechan or was necessary for the transmission of the
16 information or the accomplishment of the purpose for which the lawyer was consulted.

17 i. The Court finds the issue raised in section I of ECF NO. 272 is now **moot**.

18 3. Regarding **ECF No. 274**, wherein Plaintiff challenges the adequacy of Rosette
19 Defendants' compliance with the Court's February 4, 2020 Order, the Court finds
20 Rosette Defendants' compliance satisfactory as to the issues Plaintiff raised in this
21 motion.

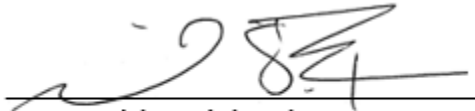
22 4. To the extent the Court has ordered Quechan and Rosette Defendants to file
23 supplemental information regarding certain privilege log entries, no later than **April 27,**
24 **2020**, each of them shall lodge a proposed order to efile_berg@casd.uscourts.gov,
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27 ³ At the hearing, the Court inadvertently said that this would be addressed by Quechan's supplemental
28 filing, however, because the Court needs information regarding items on Rosette Defendants' privilege
log, the Court is ordering Rosette Defendants, rather than Quechan, to provide this supplemental
information.

1 separately addressing each document identified in the categories for which the Court
2 has requested additional information.

3 **IT IS SO ORDERED.**

4 Dated: April 17, 2020

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7 Honorable Michael S. Berg
8 United States Magistrate Judge
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