

1 and proper.” ICSC Rules § 2.6.06(B). In determining whether to grant or deny leave to Amend, the
2 Court finds the standards relating to Motions to Amend under federal law instructive.

3 While leave to amend should be freely given, leave to amend should not be granted
4 automatically. *Blomdahl v. Jones*, No. CV201207PHXMTLDMF, 2021 U.S. Dist. LEXIS 15995,
5 2021 WL 1795623, at *4 (D. Ariz. Jan. 27, 2021), *report and recommendation adopted*, No.
6 CV2001207PHXMTLDMF, 2021 U.S. Dist. LEXIS 70550, 2021 WL 1345695 (D. Ariz. Apr. 12,
7 2021) (citing *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990)). Leave to amend
8 need not be granted if, among other factors, the party opposing the amendment shows: (1) undue
9 delay; (2) bad faith or dilatory motives on the part of the movant; (3) repeated failure to cure
10 deficiencies by previous amendments; (4) undue prejudice to the opposing party; or (5) futility of
11 the proposed amendment. *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222
12 (1962); *Desertrain v. Los Angeles*, 754 F.3d 1147, 1154 (9th Cir. 2014). Further, if a complaint as
13 amended could not withstand a motion to dismiss, the amended should be denied as futile.
14 Although there is a general rule that parties are allowed to amend their pleadings, it does not extend
15 to cases in which any amendment would be an exercise in futility, *Pisciotta v. Teledyne Industries,*
16 *Inc.*, 91 F.3d 1326, 1331 (9th Cir. 1996), or where the amended complaint would also be subject to
17 dismissal, *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991).

18 DISCUSSION

19 Petitioners seek to Amend their Complaint by (i) adding Bruce Calac as a respondent; (ii)
20 removing injunctive relief and attorneys’ fees and costs from its prayer for relief; and (iii)
21 modifying/adding language intended to clarify that the relief sought is not against the Tribe.
22 Respondent argues the Motion to Amend was filed in bad faith, would result in undue delay and
23 prejudice to Respondent’s, and is futile.

24 Bad Faith

25 While Petitioners’ Motion to Amend was filed after briefing was completed and a hearing
26 was scheduled on Respondents’ pending Motion to Dismiss, the Court does not believe there is
27 sufficient evidence that Petitioners filed the Motion to Amend in bad faith.

28 Undue Delay or Prejudice

1 This Court must weigh the liberal rules regarding amendment of pleadings with its
2 responsibility to ensure the just, speedy, and inexpensive determination of every action. As a result
3 of Petitioners' Motion to Amend, the resolution of the Respondents' Motion to Dismiss has already
4 been delayed and it is likely that if the Court granted the Motion to Amend, briefing on the Motion
5 to Dismiss would begin anew, resulting in considerable delay and cost to both parties. Thus, the
6 Court finds that granting the Motion to Amend could result in undue delay and undue prejudice to
7 Respondents in light of Respondents' pending Motion to Dismiss.

8 Futility

9 Although there is a general rule that parties are allowed to amend their pleadings, it does not
10 extend to cases in which any amendment would be an exercise in futility, Pisciotta v. Teledyne
11 Industries, Inc., 91 F.3d 1326, 1331 (9th Cir. 1996), or where the amended complaint would also be
12 subject to dismissal, Saul v. United States, 928 F.2d 829, 843 (9th Cir. 1991).

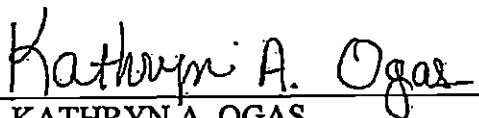
13 Respondents seek dismissal of this action on multiple theories, including, tribal sovereign
14 immunity, qualified immunity, lack of standing, failure to exhaust administrative remedies,
15 mootness, and the impossibility of joining a necessary and indispensable party. It is clear that
16 Petitioners' Motion to Amend seeks to moot a number of these arguments; however, the Court is
17 not convinced that the proposed First Amended Complaint is sufficient to do so. More importantly,
18 even if the First Amended Complaint effectively dispenses with some of Respondents' arguments,
19 the Court finds it unlikely that the First Amended Complaint can survive the pending Motion to
20 Dismiss.

21 CONCLUSION

22 For the reasons set forth above, Petitioner's Motion to Amend Complaint is DENIED.
23 Parties stipulated to communication and service of the Court documents by email.

24 **IT IS SO ORDERED.**

25 DATED: October 25, 2022

26 
27 KATHRYN A. OGAS
28 Judge Pro Tem
Intertribal Court of Southern
California