

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CINDY ALEGRE, et al.,
Plaintiffs,
v.
UNITED STATES OF AMERICA, et al.,
Defendants.

Case No.: 16-cv-02442-AJB-MSB
Consolidated with
Case No.: 17-cv-01149-AJB-MSB

**ORDER GRANTING MOTION FOR
LEAVE TO FILE BRIEF OF
AMICUS CURIAE AND DENYING
AS MOOT PLAINTIFFS' EX PARTE
MOTION TO APPEAR VIA ZOOM
OR TELEPHONICALLY**

(Doc. Nos. 298, 307)

Before the Court is the San Pasqual Band of Diegueño Mission Indians' ("San Pasqual," the "Band," or the "Tribe") Motion for Leave to File Brief of Amicus Curiae. (Doc. No. 298.) The motion is fully briefed. (Doc. Nos. 302, 303, 306, 308.) The United States does not oppose the motion, but seeks an opportunity to respond to the brief. (Doc. No. 302.) Plaintiffs oppose the motion (Doc. No. 303) and presumably wish to respond to the brief if the motion is granted (*see* Doc. No. 300).

Also before the Court is Plaintiffs' *ex parte* Motion to Appear via Zoom or Telephonically. (Doc. No. 307.) No one has responded to Plaintiffs' motion.

Pursuant to Civil Local Rule 7.1.d.1., the Court finds these matters suitable for disposition without oral argument.

For the following reasons, the Court **GRANTS** the Band's motion. (Doc. No. 298.) The Court **DENIES** Plaintiffs' *ex parte* motion as moot. (Doc. No. 307.) The Court also **AMENDS** the cross-motion for summary judgment briefing schedule to provide the parties an opportunity to respond to the Tribe's brief. (Doc. No. 281.)

I. BACKGROUND

This action arises from Plaintiffs' long-standing desire for federal recognition as members of the Band. Given the history of these proceedings, the Court incorporates its prior discussion of the background of this case. (Doc. No. 277 at 2–5.)¹ The parties are now briefing cross-motions for summary judgment on Plaintiffs' Fifth Amended Complaint. (*See* Doc. Nos. 281; 294; 297.)

The Tribe seeks to file an *amicus* brief in support of the United States' motion for summary judgment. (Doc. No. 298 at 2.)

II. LEGAL STANDARD

The classic role of *amicus curiae* is to “assist[] in a case of general public interest, supplement[] the efforts of counsel, and draw[] the court’s attention to law that escaped consideration.” *Miller-Whol Co. v. Comm’r of Labor & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982) (citations omitted).

“The district court has broad discretion to appoint amici curiae.” *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *overruled in part on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). “There are no strict prerequisites that must be established prior to qualifying for amicus status” in a district court. *California by & through Becerra v. U.S. Dep’t of the Interior*, 381 F. Supp. 3d 1153, 1164 (N.D. Cal. 2019) (citations omitted). In fact, the Federal Rules of Civil Procedure do not address such motions, so

¹ Page citations refer to the pagination generated by the Case Management/Electronic Case Files system.

1 district courts “rely on Federal Rule of Appellate Procedure 29 (‘Rule 29’)” when
2 considering such requests. *United States v. State Water Res. Control Bd.*, No. 2:19-cv-
3 00547-DAD-EPG, 2020 WL 9144006, at *3 (E.D. Cal. Apr. 23, 2020). Ultimately, “an
4 individual seeking to appear as amicus must merely make a showing that his participation
5 is useful or otherwise desirable to the court.” *California*, 381 F. Supp. 3d at 1164 (citations
6 omitted).

7 **III. DISCUSSION**

8 Upon review of the Tribe’s motion and accompanying brief, the Court is persuaded
9 that the Band’s participation may be useful and desirable to the Court. The Tribe’s motion
10 and brief substantially comply with Rule 29’s requirements. The motion and brief
11 additionally demonstrate that the Court may benefit from the Band’s contributions to the
12 briefing. Plaintiffs’ arguments to the contrary are unavailing.

13 **A. The Tribe’s motion and brief substantially comply with Federal Rule of** 14 **Appellate Procedure 29.**

15 As previously noted, district courts look to Rule 29 when considering whether to
16 appoint an *amicus*. *State Water Res. Control Bd.*, 2020 WL 9144006, at *3.

17 Pursuant to Rule 29(a)(2), an entity that is not the United States, a United States
18 officer or agency, or a state “may file a brief only by leave of court or if the brief states that
19 all parties have consented to its filing.” A motion for leave to file “must be accompanied
20 by the proposed brief and state: (A) the movant’s interest; and (B) the reason why an
21 amicus brief is desirable and why the matters asserted are relevant to the disposition of the
22 case.” Fed. R. App. P. 29(a)(3).

23 An *amicus* brief must include, “if the amicus curiae is a corporation, a disclosure
24 statement like that required of parties by [Federal Rule of Appellate Procedure] 26.1” and
25 “a concise statement of the identity of the amicus curiae, its interest in the case, and the
26 source of its authority to file.” Fed. R. App. P. 29(a)(4)(A), (a)(4)(D). The brief must also
27 disclose if it was authored in whole or in part or funded by a party or a party’s counsel, or
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1 if anyone other than the movant *amicus* contributed money for the preparation or
2 submission of the brief. Fed. R. App. P. 29(a)(4)(E).

3 Plaintiffs assert that the Band did not comply with these requirements, and so the
4 motion should be denied. (Doc. No. 303 at 5–8.) The Court disagrees.

5 Plaintiffs first state that “[t]he Tribe, as *amicus*, has only stated its financial interest
6 in this litigation” and therefore did not comply with “Rule 29(3)(a).”² (*Id.* at 5.) Contrary
7 to Plaintiffs’ statement, the Tribe plainly states that it “has strong government interests in
8 the Court’s adjudication of the instant matter . . . because the resolution of the matter as
9 desired by Plaintiffs would disrupt and otherwise affect the Band’s internal social and
10 economic relations and interests.” (Doc. No. 298 at 3–4; *see also* Doc. No. 298-1 at 6 (“The
11 Band has strong governmental interests in matters with the potential to affect its social and
12 internal affairs, including its membership. . . . The Band also has compelling self-
13 government and sovereign interests in defending itself from relief requests in Plaintiffs’
14 Fifth Amended Complaint.”).) The Tribe has thus complied with Rule 29(a)(3)(A)’s
15 requirement to state its interest in the litigation.³

16 Plaintiffs next cursorily state that the Band did not comply with Rule 29(a)(3)(B)’s
17 requirement “to state reasons why an amicus brief is desirable and why the matters asserted
18 are relevant to the disposition of the case.” (Doc. No. 303 at 5.) However, the Band’s
19 motion plainly states that the Tribe “provides a distinct perspective” (Doc. No. 298 at 5)
20 and indicates that its sovereign immunity may be implicated by the relief that Plaintiffs
21 request (*id.* at 3–5).

24 ² Given the context of Plaintiffs’ filing and the fact that there is no “Rule 29(3)(a)” in the Federal
25 Rules of Appellate Procedure, the Court construes Plaintiffs’ citation to refer to Federal Rule of Appellate
26 Procedure 29(a)(3)(A). (*See* Doc. No. 303 at 5.) The Court construes Plaintiffs’ citations to “Rule
29(3)(b)” and “Rule 29(4)(a)” similarly.

27 ³ Even if the Tribe’s interest in this litigation is purely financial, as Plaintiffs claim (Doc. No. 303
28 at 13–14), it is unclear how and why the Tribe’s identification of a financial interest would not be sufficient
to comply with Rule 29(a)(3)(A)’s requirements.

1 Plaintiffs go on to contend that “Rule 29(4)(a) requires the *amicus curiae*, if it is a
2 corporation, to make a disclosure statement like that required of parties by Rule 26.1.”
3 (Doc. No. 303 at 5.) But Plaintiffs do not offer any evidence that the Tribe is a corporation
4 within the meaning of Federal Rule of Appellate Procedure 29(a)(4)(A). (*See generally id.*)
5 Instead, Plaintiffs claim that “[t]he Tribe has created a corporation that runs the business
6 of the Tribe.” (*Id.* at 5.) Plaintiffs additionally speculate that the Tribe’s corporation that
7 “runs the business of the Tribe” and “was formed to manage all aspects of the [T]ribe’s
8 gaming operations” “has paid the attorney fees and costs involved in this case.” (*Id.* at 5–6.)
9 In contrast, the Tribe affirmatively states that “[n]o person or entity—other than the
10 Band—contributed money intended to fund the preparation or submission of this amicus
11 brief.” (Doc. No. 298-1 at 6 n.1.) Given the apparent lack of evidence that the Tribe is a
12 corporation and the Tribe’s affirmative statement regarding the source of funding for the
13 proposed *amicus* brief, the Court declines to require the Tribe to comply with Federal Rule
14 of Appellate Procedure 29(a)(4)(A)’s corporate disclosure requirement.

15 Plaintiffs further argue that the Tribe “failed to disclose the source of its authority to
16 file its instant Motion” pursuant to Rule 29(a)(4)(D) because the Tribe’s General Council
17 did not approve of the Tribe bringing a lawsuit. (Doc. No. 303 at 6.) Plaintiffs
18 misunderstand Rule 29(a)(4)(D)’s requirements.⁴ The Committee Notes to the 1998
19 Amendments to Rule 29 clearly indicate that in order for an “amicus to state the source of
20 its authority to file[,] [t]he amicus simply must identify which of the provisions in Rule
21 29(a) provides the basis for the amicus to file its brief.” Thus, Rule 29(a)(4)(D) merely
22 requires an *amicus* brief to state whether the brief is permitted because it is filed (1) by the
23 “United States or its officer or agency or a state . . . without the consent of the parties or
24 leave of court”, (2) by an *amicus* “by leave of court”, or (3) by an *amicus* “that all parties
25 have consented to.” Fed. R. App. P. 29(a)(2), (a)(4)(D). Although it is true that Tribe’s
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28 ⁴ The Tribe similarly misunderstands Rule 29(a)(4)(D)’s requirements. (*See* Doc. No. 308 at 5–8.)

1 proposed *amicus* brief does not indicate that it belongs in any of these three categories (*see*
2 *generally* Doc. No. 298-1), it is plausible that this shortcoming is because the Band had to
3 lodge its proposed brief before the Court could grant leave. *See* Fed. R. App. P. 29(a)(3)
4 (requiring motion for leave to “be accompanied by the proposed brief”). Plaintiffs do not
5 cite any authority to support their proposition that such a procedural misstep requires the
6 Court to deny the motion and reject the Tribe’s brief. The Court finds that the better remedy
7 is to require the Tribe to file a corrected brief that complies with Rule 29(a)(4)(D) by stating
8 that the *amicus* brief is filed by leave of Court.

9 Under these circumstances, the Court is satisfied that the Tribe has sufficiently
10 complied with Rule 29’s requirements.⁵

11 **B. The Tribe’s brief appears to be beneficial to the Court.**

12 **1. The Tribe’s interests are distinguishable from the United States’.**

13 Plaintiffs additionally argue that the Tribe’s *amicus* brief is unnecessary because the
14 Band’s interests are the same as the United States’. (Doc. No. 303 at 12–13.) In particular,
15 Plaintiffs insist that the Tribe and the United States have identical interests because, in part,
16 the proposed *amicus* brief “cites [the United States’] own motion-to-dismiss brief.” (*Id.* at
17 13.)

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20 ⁵ The Court notes, on the other hand, that the Tribe did not comply with the Court’s Civil Case
21 Procedures in filing the present motion. For example, the Tribe did not call to obtain a hearing date for its
22 motion. *But see* J. Battaglia Civ. Case Proc. § III.B. Nor does it appear that the Tribe attempted to meet
23 and confer with counsel for Plaintiffs or the United States before filing the present motion. *Id.* § III.A.
24 And the Tribe is not alone in its noncompliance. For instance, “exhibits must be submitted electronically
25 in CM/ECF as attachments.” *Id.* § I.D. (citing CASD ECF Policies & Procedures § 2.k.). Despite this
26 requirement, Plaintiffs submitted the Declaration of Diana Martinez in Support of Plaintiffs Opposition to
27 the Amicus Brief separately instead of as an attachment to their response. (Doc. No. 306; *see also* Doc.
28 No. 303.) Additionally, the Court has previously instructed Plaintiffs’ counsel that counsel must contact
the Court’s law clerks before filing an *ex parte* motion. (Doc. No. 301 at 2 (citing J. Battaglia Civ. Case
Proc. § V.A.)) Plaintiffs’ counsel did not contact the Court before filing the present *ex parte* motion.

27 In the interest of resolving the present motions expeditiously to minimize any impacts on the
28 cross-motion for summary judgment briefing schedule, the Court overlooks these variances from the
Court’s procedures. *See* J. Battaglia Civ. Case Proc. at 1.

1 Plaintiffs’ argument makes little sense. The mere fact that one person has cited
2 another’s briefs does not mean that they share the same interests. For instance, Plaintiffs’
3 opposition includes multiple citations to the Tribe’s motion and brief. (*Id.* at 7–8, 12–13.)
4 Given that Plaintiffs oppose the Tribe’s motion, however, it is illogical to say that such
5 citations mean that Plaintiffs share the Tribe’s interests.

6 Regardless, a review of the filings reveals that the United States’ and the Tribe’s
7 interests do not necessarily align. Again, the Tribe makes clear that its interests in this
8 matter relate to its ability to govern itself and maintain its “internal social and economic
9 relations and interests.” (Doc. No. 298 at 4.) In contrast, the United States has focused on
10 defending its October 31, 2024 decision “declining to increase [Modesta Martinez
11 Contreras’] blood degree from 3/4 to 4/4.” (Doc. No. 297 at 8.) Thus, the United States’
12 interests here are upstream from and are not necessarily the same as the Tribe’s.

13 **2. The Tribe’s arguments may benefit the Court.**

14 Plaintiffs further argue that the Tribe’s arguments are moot. (Doc. No. 303 at 8–11.)
15 Specifically, Plaintiffs point out that the Court has dismissed certain causes of action and
16 that the Tribe seeks to challenge specific forms of relief that Plaintiffs previously requested
17 based on the dismissed causes of action. (*Id.*) This is not entirely accurate. In any event,
18 Plaintiffs appear to continue arguing at least one facet of a dismissed cause of action,
19 meaning the Tribe’s challenge to a related form of relief is not moot and may assist the
20 Court.

21 In their proposed brief, the Tribe challenges three specific forms of relief that
22 Plaintiffs requested. First, the Tribe opposes the Court granting Plaintiffs “both a
23 preliminary and permanent injunction ‘prohibiting the [United States] from approving any
24 [Band] enrollment ordinance that removes the [United States] from the enrollment
25 process.” (Doc. No. 298-1 at 9 (quoting Doc. No. 254-1 at 84 ¶¶ 1–2 (Sixth Cause of
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1 Action)⁶.) Second, the Tribe objects to an order “declaring 25 C.F.R. § 48.5(f)
2 unconstitutional and void.” (Doc. No. 298-1 at 9 (citing Doc. No. 254-1 at 82 ¶ 1 (Third
3 Cause of Action)).) Third, the Tribe contests the Court’s ability to enter an “order directing
4 Defendants to ‘ensure that Plaintiffs receive retroactive per capita income from April 10,
5 2005, along with any other retroactive benefits.’” (Doc. No. 298-1 at 9 (quoting Doc. No.
6 254-1 at 82 ¶ 4 (Third Cause of Action)).)

7 Plaintiffs contend that the Tribe’s challenges are moot because the Court has
8 dismissed both the Third and Sixth Causes of Action from the Fifth Amended Complaint.
9 (Doc. No. 303 at 10–11.)

10 Plaintiffs are partially correct. In ruling on the United States’ motion to dismiss
11 Plaintiffs’ Fifth Amended Complaint, the Court dismissed Plaintiffs’ Third and Sixth
12 Causes of Action. (Doc. No. 277 at 9–12, 14–15.) However, the Court’s dismissal of
13 Plaintiffs’ Third Cause of Action is more nuanced than Plaintiffs portray. (*Id.* at 11–12.)

14 In their Third Cause of Action, Plaintiffs challenged (1) the method by which the
15 United States promulgated 25 C.F.R. §§ 48.1–48.15 (1960), (2) the United States’ alleged
16 previous application of the regulations to certain individuals who do not have San Pasqual
17 blood, and (3) the United States’ application (or failure to apply) the regulations to
18 Plaintiffs. (*Id.* at 9.) Plaintiffs thus bundled three claims into one cause of action. (*Id.*) The
19 Court held that Plaintiffs’ objection to the method by which the United States promulgated
20 the regulations is moot. (*Id.* at 10.) The Court also determined that Plaintiffs lack standing
21 to challenge the United States’ alleged application of the regulations to certain individuals
22 who do not have San Pasqual blood. (*Id.* at 10–11.) The Court thus dismissed these two
23 claims. (*Id.* at 11–12.) However, the Court concluded that Plaintiffs’ challenge to the
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26 ⁶ The Tribe cites to “5AC at 83, ¶¶ 1–2.” (Doc. No. 298-1 at 9.) The Court construes this as a citation
27 to Document Number 254-1 at page 84 because page 83 of the document does not include a paragraph 1,
28 nor does the page include any discussion relating to injunctive relief. (*See* Doc. No. 254-1 at 83.) The
Court construes the Tribe’s other citations to the Fifth Amended Complaint similarly.

1 United States’ application (or failure to apply) the regulations to Plaintiffs “is raised by and
2 arguable under Count 1.” (*Id.* at 12.)

3 Under these circumstances, Plaintiffs may theoretically seek to pursue at least some
4 of the relief they requested in their Third Cause of Action by making some of the same
5 arguments as a part of their First Cause of Action. (*See id.*) In fact, this is precisely what
6 Plaintiffs are now doing. A review of Plaintiffs’ motion for summary judgment reveals that
7 they seek to keep part of their Third Cause of Action and the attendant requested relief
8 alive by continuing to make related arguments. (*Compare, e.g.,* Doc. No. 294-1 at 11
9 (asserting the United States violated the Administrative Procedure Act by “adding 25
10 C.F.R. §48.5(f) without the Tribes [*sic*] knowledge or approval”), *with* Doc. No. 267 at 18
11 (stating “[t]his Court needs to declare §48.5(f) unconstitutional” because “Plaintiffs’
12 ancestors were not put on notice of the rule change prior to publishing Part 48.5(f) as part
13 of 25 C.F.R. 48”).)

14 In contrast, the Court’s dismissal of Plaintiffs’ Sixth Cause of Action was much more
15 straightforward. (Doc. No. 277 at 14–15; *see also id.* at 18.)

16 Given that Plaintiffs may still make some arguments related to their Third Cause of
17 Action, it is plausible that Plaintiffs continue to request some of the relief they previously
18 requested as a part of that cause of action. (*See id.* at 12; *see also* Doc. No. 294-1 at 11.)

19 Under these circumstances, the Tribe’s challenges to the relief that Plaintiffs
20 previously requested is not entirely moot. The Court thus **FINDS** that the Tribe’s proposed
21 *amicus* brief may be beneficial to the Court.

22 **C. Plaintiffs’ remaining arguments are unavailing.**

23 Plaintiffs present two additional arguments against the Tribe’s motion for leave to
24 file an *amicus* brief. First, Plaintiffs assert that the motion “is simply an end run around the
25 court’s ruling in *Alto v. Black* that the Tribe [SPBMI] is not an indispensable party.” (Doc.
26 No. 303 at 11–12.) Second, Plaintiffs claim that the Tribe “is not a ‘real party in interest.’”
27 (*Id.* at 14.)

28 These arguments are unpersuasive.

Beginning with *Alto v. Black*, 738 F.3d 1111 (9th Cir. 2013), it is unclear how the Ninth Circuit’s decision controls the Tribe’s motion. There, the Ninth Circuit addressed the Tribe’s contention that the Band “is a required party with regard to claims one, two, and three, so that preliminary injunctive relief as to those claims could not be granted in its absence” by holding that the Tribe is not a necessary party. *Id.* at 1125–29. Crucially, the Ninth Circuit noted that the requested relief in that case was “vacatur of the [United States’] Order.” *Id.* at 1129.

Here, Plaintiffs seek more than just vacatur of a United States order. (*See, e.g.*, Doc. No. 254-1 at 82 ¶¶ 1–4 (Third Cause of Action) (seeking, *inter alia*, “An Order declaring Title 25, C.F.R., §48.5(f) [*sic*] unconstitutional and therefore void” and “An Order directing Defendants to ensure that Plaintiffs receive retroactive per capita income from April 10, 2005, along with other retroactive benefits.”).) Furthermore, the Tribe seeks only *amicus*—not intervenor—status. (Doc. No. 298.)

Given these distinctions, the Court is not persuaded that *Alto* establishes any restriction that bars the Tribe from participating in this action as an *amicus*.

Next, Plaintiffs claim that the Tribe is not a “real party in interest” and appear to argue that the United States will represent the Tribe’s interests sufficiently. (Doc. No. 303 at 14.) But as the Court noted, the United States’ interests in this litigation are not necessarily the same as the Tribe’s. (*Supra* at 6–7.)

IV. CONCLUSION

For the foregoing reasons, the Court **FINDS** that the Tribe has substantially complied with Federal Rule of Appellate Procedure 29’s requirements and that the Tribe’s proposed *amicus* brief may be beneficial to the Court. Accordingly, the Tribe’s Motion for Leave to File Brief of Amicus Curiae is **GRANTED**. (Doc. No. 298.) The October 29, 2026 hearing on the Tribe’s motion is **VACATED**. (*See* Doc. No. 299.) Plaintiffs’ *ex parte* Motion to Appear Via Zoom or Telephonically is **DENIED** as moot. (Doc. No. 307.)

The Court further **ORDERS** that on or before **October 22, 2026**, the Tribe must file a corrected brief that complies with Rule 29(a)(4)(D) by stating that the *amicus* brief is

1 filed by leave of Court. The Tribe may not make any other substantive changes to its *amicus*
2 brief.

3 The Court **AMENDS** the remaining cross-motion for summary judgment briefing
4 schedule as follows:

- 5 1. On or before **November 16, 2026**, Plaintiffs must file (A) any reply in support
6 of Plaintiffs' motion for summary judgment; (B) an opposition to the United
7 States' cross-motion for summary judgment; and (C) a response to the Tribe's
8 *amicus* brief. These documents must be submitted as one consolidated
9 briefing not to exceed 47 pages.
- 10 2. On or before **December 15, 2026**, the United States must file (A) any reply in
11 support of its cross-motion for summary judgment and (B) a response to the
12 Tribe's *amicus* brief. These documents must be submitted as one consolidated
13 briefing not to exceed 15 pages.
- 14 3. The Tribe may not file a reply brief. Fed. R. App. P. 29(a)(7).
- 15 4. On or before **December 22, 2026**, the parties must provide the Court with a
16 printed copy of the administrative record. The Court requests that the printed
17 administrative record be double-sided, tabbed, and provided in two-inch
18 binders.
- 19 5. The hearing on the cross-motions for summary judgment is **CONTINUED**
20 from January 14, 2027, at 10:00 AM to **February 25, 2027**, at 10:00 AM in
21 Courtroom 4A before the undersigned.

22 **IT IS SO ORDERED.**

23 Dated: October 15, 2026

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25 Hon. Anthony J. Battaglia
26 United States District Judge
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