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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Robert D. Maguire,

10 Plaintiff,

11 v.

12 Cathleen A. Coltrell, et al.,

13 Defendants.

No. CV-14-01255-PHX-DGC

ORDER

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15 Plaintiff Robert D. Maguire moves to amend his complaint against Defendants
16 Cathleen A. Coltrell and John Carmichael to include the claim of unjust enrichment, as
17 well as adjust the amounts of alleged compensation and damages claimed. Doc. 19.
18 Defendants oppose the motion, asserting the proposed unjust enrichment claim is
19 “improperly pled and fails as a matter of law.” Doc. 21 at 1. The motion is fully briefed
20 and no party seeks oral argument. The Court will grant the motion.

21 **I. Background**

22 Plaintiff alleges the following facts in his proposed amended complaint. *See*
23 Doc. 19-1. In January 2006, Plaintiff and Coltrell began living together at a house
24 Coltrell owned (the “Justine House”). *Id.*, ¶ 6. Plaintiff immediately began to pay
25 Coltrell \$1,500 per month, which Coltrell principally used to retire the mortgage that
26 encumbered the house. *Id.* Plaintiff and Coltrell formed a real estate development joint
27 venture (“Maguire-Coltrell JV”), in which they were equal partners. *Id.*, ¶¶ 2, 7. Plaintiff
28 and Coltrell intended hold the Justine House as an investment for their joint venture. *Id.*

1 In 2008, Plaintiff suffered the failure of a business, known as Advanced
2 Telemanagement Group, Inc. (“ATG”), in which he had partial ownership. *Id.*, ¶ 8. In
3 the summer of 2008, hoping to deter ATG’s creditors from pursuing legal action against
4 him, Plaintiff transferred some amount of his personal property to Coltrell and had the
5 property recorded in her name. *Id.*, ¶ 9. It was the intent of the parties that the Maguire-
6 Coltrell JV would own the transferred property, and the property would remain available
7 for use by Maguire-Coltrell JV. *Id.*

8 In 2009, Maguire-Coltrell JV purchased another property, the “Milton House.”
9 *Id.*, ¶ 10. While attempting to obtain financing to purchase the Milton House, a third
10 party’s legal action against Plaintiff’s ex-wife temporarily damaged Plaintiff’s credit
11 score. *Id.*, ¶ 12. Rather than delay the financing process, Plaintiff and Coltrell agreed to
12 purchase the Milton House solely in Coltrell’s name. *Id.* It was the intent of the parties
13 that Plaintiff and Coltrell would own the Milton House equally, and hold it for the benefit
14 of Maguire-Coltrell JV. *Id.* Plaintiff contributed financially to the purchase of the Milton
15 House, providing \$104,000 toward the \$160,000 down payment and \$339,047 total.
16 *Id.*, ¶ 13. In July of 2009, Plaintiff and Coltrell moved into the Milton House following
17 its renovation. *Id.*, ¶ 15.

18 In February 2013, while Plaintiff was out of the country, Coltrell notified him by
19 telephone that she had met another man, Defendant Carmichael, and intended to pursue a
20 relationship with him. *Id.*, ¶ 16. Following Plaintiff’s return to Arizona, Coltrell asked
21 Plaintiff to move out of the Milton House, and Plaintiff did so. *Id.* Shortly after Plaintiff
22 moved out, Coltrell and Carmichael were married and they lived in the Milton House
23 until moving to Colorado. *Id.*

24 Coltrell sold the Justine House in June of 2013 and the Milton House in September
25 of 2013. *Id.*, ¶¶ 18-19. Plaintiff asserts that the sale of both houses, in addition to the
26 sale of the personal property Plaintiff transferred to Coltrell in 2008, “effected a de facto
27 dissolution of the joint venture.” *Id.*, ¶ 20. Plaintiff demanded that Coltrell distribute the
28 money he is due from the liquidation of Maguire-Coltrell JV, but Coltrell has refused and

1 continues to withhold all proceeds. *Id.*

2 On May 7, 2014, Plaintiff brought this action against Defendants in the Maricopa
3 County Superior Court. Doc. 1. On June 6, 2014, Defendants removed the action to this
4 Court. *Id.* Plaintiff filed this motion to amend on October 13, 2014. Doc. 19.

5 **II. Legal Standard**

6 Under Rule 15, the Court “should freely give leave [to amend] when justice so
7 requires.” Fed. R. Civ. P. 15(a)(2). The policy in favor of leave to amend must not only
8 be heeded, *see Foman v. Davis*, 371 U.S. 178, 182 (1962), it must be applied with
9 extreme liberality, *see Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 880 (9th
10 Cir. 2001). This liberality “is not dependent on whether the amendment will add causes
11 of action or parties.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir.
12 1987). The Court may deny a motion to amend if there is a showing of undue delay or
13 bad faith on the part of the moving party, undue prejudice to the opposing party, or
14 futility of the proposed amendment. *See Foman*, 371 U.S. at 182. Generally, however,
15 “this determination should be performed with all inferences in favor of granting the
16 motion.” *Griggs v. Pace Am. Group, Inc.*, 170 F.3d 877, 880 (9th Cir. 1999).

17 **III. Analysis**

18 Plaintiff’s proposed amended complaint seeks, in part, to add a claim of unjust
19 enrichment. Doc. 19-1, ¶¶ 37-38. Plaintiff’s motion to amend is timely, and there is no
20 allegation of bad faith. Defendants contend that the Court should deny the motion as
21 futile, claiming the proposed amended complaint alleges only the first of five elements
22 required for unjust enrichment. Doc. 21 at 2. The Court disagrees.

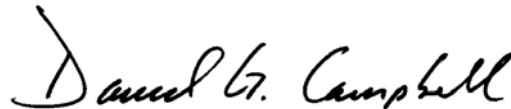
23 “[A] proposed amendment is futile only if no set of facts can be proved under the
24 amendment to the pleadings that would constitute a valid and sufficient claim or
25 defense.” *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988); *see*
26 *Foman*, 371 U.S. at 182 (stating that “[i]f the underlying facts or circumstances relied
27 upon by a [movant] may be a proper subject of relief, he ought to be afforded an
28 opportunity to test his claim on the merits”); *DCD Programs*, 833 F.2d at 186 (stating

1 that “a motion to make an ‘[a]mendment is to be liberally granted where from the
2 underlying facts or circumstances, the plaintiff may be able to state a claim’”) (quoting
3 *McCartin v. Norton*, 674 F.2d 1317, 1321 (9th Cir. 1982)).

4 “To establish a claim for unjust enrichment, a claimant must show (1) an
5 enrichment; (2) an impoverishment; (3) a connection between the enrichment and the
6 impoverishment; (4) the absence of justification for the enrichment and the
7 impoverishment; and (5) the lack of legal remedy.” *Loiselle v. Cosas Management*
8 *Group, LLC*, 228 P.3d 943, 946 (Ariz. Ct. App. 2010). Plaintiff alleges Defendant was
9 enriched (Doc. 19-1, ¶¶ 18-23), and Plaintiff was impoverished (*Id.*, ¶¶10-14, 18-23), by
10 the sale of property in which Plaintiff had invested and held an ownership interest (*id.*),
11 and that Defendant is “wrongfully withholding” Plaintiff’s share of the proceeds from
12 those sales (Doc. 19-1, ¶ 20). Plaintiff has alleged sufficient facts to state a claim for
13 unjust enrichment.

14 **IT IS ORDERED** that Plaintiff’s motion to amend his complaint (Doc. 19) is
15 **granted**. Plaintiff shall file the amended complaint on or before **November 21, 2014**.

16 Dated this 10th day of November, 2014.

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21 David G. Campbell
22 United States District Judge
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