

1 **I. Legal Standards**

2 Under Fed. R. Civ. P. 15(a), a party may amend a pleading once as a matter of course within 21
3 days of service, or if the pleading is one to which a response is required, 21 days after service of a
4 motion under Rule 12(b), (e), or (f). “In all other cases, a party may amend its pleading only with the
5 opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). Here, Defendant filed
6 an Answer on June 15, 2015. (Doc. 6) Therefore, Plaintiff requires either consent of Defendant or
7 leave of the Court to file an amended complaint.

8 Granting or denying leave to amend a complaint is in the discretion of the Court, *Swanson v.*
9 *United States Forest Service*, 87 F.3d 339, 343 (9th Cir. 1996), though leave should be “freely give[n]
10 when justice so requires.” Fed. R. Civ. P. 15(a)(2). “In exercising this discretion, a court must be
11 guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the
12 pleadings or technicalities.” *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). Thus, the
13 policy to grant leave to amend is applied with extreme liberality. *Id.* There is no abuse of discretion “in
14 denying a motion to amend where the movant presents no new facts but only new theories and provides
15 no satisfactory explanation for his failure to fully develop his contentions originally.” *Bonin v.*
16 *Calderon*, 59 F.3d 815, 845 (9th Cir. 1995); *see also Allen v. City of Beverly Hills*, 911 F.2d 367, 374
17 (9th Cir. 1990).

18 **II. Discussion and Analysis**

19 As an initial matter, Defendant argues that the motion to amend the complaint “is not premised
20 on any ground pursuant to which the amendment should be granted.” (Doc. 18 at 2, emphasis omitted)
21 Defendant asserts, “Typically the grounds for a motion to amend are based on the discovery of
22 additional information; correction of a misnomer or other error; or to cure a defect in the original
23 pleading.” (*Id.*, citing Wallace & Wagstaffe, Cal. Prac. Guide: Fed. Civ. Pro. Before Trial (The Rutter
24 Group 2015) ¶ 8:1480) Defendant contends that Plaintiffs’ proposed amended complaint “essentially
25 alleges” facts against Mr. Griffith that were known to Plaintiffs “at all times.” (*Id.* at 2-3) Defendant
26 concluded that because Plaintiffs have not identified “any new or additional information since filing
27 their original error,” “no grounds for an amendment to exist.” (*Id.*) Significantly, however, Defendant
28 ignores the fact that Plaintiffs also seek leave to identify Steve Gifford as a named plaintiff in this

1 action, who was employed by Randy’s Trucking from June 2007 to January 2015. (Doc. 17-2 at 1-2)
2 Moreover, the addition of parties is a proper ground for seeking leave to amend. *See, e.g., Borelli v.*
3 *Black Diamond Aggregates, Inc.*, 2015 U.S. Dist. LEXIS 118604 at *5-6 (E.D. Cal. Sept. 4, 2015)
4 (granting the plaintiff leave to amend to add two new class representatives); *Stanislaus Custodial*
5 *Deputy Sheriff’s Assoc. v. Deputy Sheriff’s Assoc.*, 2010 U.S. Dist. LEXIS 59177 (E.D. Cal. June 1,
6 2010) (granting the plaintiff “leave to amend to add an additional party”). Accordingly, Defendant’s
7 argument that the motion is not premised upon any proper grounds is unpersuasive, and the Court will
8 evaluate the merits of the motion.

9 In evaluating a motion to amend under Rule 15, the Court may consider (1) whether the
10 plaintiffs previously amended the complaint, (2) undue delay, (3) bad faith, (4) futility of amendment,
11 and (5) prejudice to the opposing party. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Loehr v. Ventura*
12 *County Community College Dist.*, 743 F.2d 1310, 1319 (9th Cir. 1984). These factors are not of equal
13 weight, as prejudice to the opposing party has long been held to be the most critical factor to determine
14 whether to grant leave to amend. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th
15 Cir. 2003); *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990).

16 A. Prior amendments

17 The Court’s discretion to deny an amendment is “particularly broad” where a plaintiff has
18 previously amended her complaint. *Allen*, 911 F.2d at 373; *Fidelity Fin. Corp. v. Fed. Home Loan*
19 *Bank*, 79 F.3d 1432, 1438 (9th Cir. 1986). Here, Plaintiffs have not previously amended the
20 complaint. Thus, this factor does not weigh against amendment.

21 B. Undue delay

22 By itself, undue delay is insufficient to prevent the Court from granting leave to amend
23 pleadings. *Howey v. United States*, 481 F.2d 1187, 1191(9th Cir. 1973); *DCD Programs v. Leighton*,
24 833 F.2d 183, 186 (9th Cir. 1986). Evaluating undue delay, the Court considers “whether the moving
25 party knew or should have known the facts and theories raised by the amendment in the original
26 pleading.” *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990); *see also Eminence Capital*,
27 316 F.3d at 1052. Further, the Court should examine whether “permitting an amendment would ...
28 produce an undue delay in the litigation.” *Id.* at 1387.

1 Here, Defendant argues that “Plaintiffs have unduly delayed in bringing this motion.” (Doc. 18
2 at 3, emphasis omitted) Defendant argues that “[e]very factual allegation relating to Griffith that
3 Plaintiffs now seek to add was known to Plaintiffs, at a minimum, six months prior to the filing of their
4 complaint and 10 months prior to seeking this amendment.” (*Id.* at 4) According to Defendant, the
5 “undue delay in seeking to amend the[] complaint to add Griffith premised upon facts and theories
6 known by Plaintiffs long before ever filing the complaint is a sufficient basis upon which to deny
7 Plaintiffs’ [m]otion.” (*Id.* at 5)

8 On the other hand, Defendant does not address the addition of a new plaintiff, who signed a
9 form indicating his “consent to become a party plaintiff in this action” on May 17, 2015—after the
10 Complaint was filed on May 6, 2015. (*See* Doc. 9) Moreover, Plaintiffs requested leave to amend prior
11 to the deadline imposed by the Court. Because the case was only recently scheduled and the
12 amendment would not “produce an undue delay in the litigation,” this factor does not weigh against
13 leave to amend. *See Jackson*, 903 F.2d at 1387.

14 C. Bad faith

15 There is no evidence that Plaintiffs have acted in bad faith in seeking to file an amended
16 complaint to raise an additional cause of action and identify a new defendant. Thus, this factor does
17 not weigh against an amendment.

18 D. Futility of amendment

19 “Futility of amendment can, by itself, justify the denial of a motion for leave to amend.”
20 *Bonin*, 59 F.3d at 845; *see also Miller v. Rykoff-Sexton*, 845 F.2d 209, 214 (9th Cir. 1988) (“A motion
21 for leave to amend may be denied if it appears to be futile or legally insufficient”). “To determine
22 whether the proposed amendment is futile, the Court should evaluate whether the facts alleged would
23 be sufficient to withstand a motion to dismiss pursuant to Rule 12(b)(6). *See Townsend v. University*
24 *of Alaska*, 543 F.3d 478, 486 n.6 (9th Cir. 2008) (noting that the “basis for futility is more accurately
25 characterized as a failure to state a claim for relief”).

26 Here, based upon review of the facts alleged in the proposed amended complaint, it does not
27 appear amendment would be futile. Plaintiffs allege facts sufficient to support its claims against
28 Randy’s Trucking and Mr. Griffith for overtime pay and liquidated damages pursuant to 29 U.S.C. §

1 207. (See Doc. 17-2 at 11-12) Therefore, this factor does not weigh against granting leave to amend.

2 E. Prejudice to the opposing party

3 Generally, the most critical factor in determining whether to grant leave to amend is prejudice
4 to the opposing party. *Eminence Capital*, 316 F.3d at 1052 (“Prejudice is the touchstone of the inquiry
5 under rule 15(a)”) (internal quotes omitted). Prejudice has been found where the “parties have engaged
6 in voluminous and protracted discovery” prior to amendment, or where “[e]xpense, delay, and wear
7 and tear on individuals and companies” is established. *Kaplan v. Rose*, 49 F.3d 1363, 1370 (9th Cir.
8 1994); see also *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387-88 (9th Cir. 1990) (finding prejudice
9 where permitting plaintiff to file an amended complaint would cause “the nullification of prior
10 discovery” and impose “the burden of necessary future discovery”). The burden of showing prejudice
11 is on the party opposing an amendment to the complaint. *DCD Programs*, 833 F.2d at 187. Notably,
12 there is a presumption under Rule 15(a) in favor of granting leave to amend where prejudice is not
13 shown. *Eminence Capital*, 316 F.3d at 1052.

14 Here, Defendant argues that “Randy’s Trucking has budgeted, planned, and made business
15 related decisions for the sole purpose of defending this lawsuit as pled initially by Plaintiffs.” (Doc.
16 18 at 5) According to Defendant, “Randy’s Trucking will incur tremendous attorneys’ fees and costs
17 in having to defend this action on behalf of Griffith.” (*Id.*) Therefore, Defendant concludes “Randy’s
18 Trucking will be prejudiced to the extent Griffith is added as a defendant in this action at this late
19 juncture.” (*Id.*)

20 Significantly, however, Defendant’s contentions are undermined by the fact that the case was
21 only recently scheduled, and the parties have yet to engage in any significant discovery efforts.
22 Defendant fails to explain how the company will incur “tremendous” fees and costs representing
23 claims against Mr. Griffith, when the allegations against Mr. Griffith are the same as those against
24 Randy’s Trucking. Because Defendant fails to carry its burden to demonstrate prejudice, this factor
25 does not weigh against granting leave to amend.

26 **III. Conclusion and Order**

27 Based upon the foregoing, the factors set forth by the Ninth Circuit weigh in favor of allowing
28 Plaintiff to file the Amended Complaint. See *Madeja*, 310 F.3d at 636. Therefore, the Court is acting

1 within its discretion in granting the motion to amend. *See Swanson*, 87 F.3d at 343.

2 Accordingly, **IT IS HEREBY ORDERED:**

- 3 1. Plaintiffs' motion to amend (Doc. 17) is **GRANTED**; and
- 4 2. Plaintiffs SHALL file the amended complaint within three days of the date of service of
5 this Order.

6
7 IT IS SO ORDERED.

8 Dated: October 6, 2015

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE