

1 date defendants have not appeared or responded in this matter, the court construes the motion as
2 an ex parte application for purposes of judicial efficiency and refers to it as such below.

3 Rule 15 provides that leave to amend “shall be freely given when justice so
4 requires.” Fed. R. Civ. P. 15(a). The Ninth Circuit has held that “[t]his policy is to be applied
5 with extreme liberality.” *Eminence Capital, L.L.C. v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th
6 Cir. 2003) (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir.
7 2001)). Leave to amend is not automatic, however. The Ninth Circuit considers a motion for
8 leave to amend under five factors: bad faith, undue delay, prejudice to the opposing party, futility
9 of amendment, and whether the plaintiff has previously amended the complaint. *Nunes v.*
10 *Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2004). The Ninth Circuit has held that “it is the
11 consideration of prejudice to the opposing party that carries the greatest weight.” *Eminence*
12 *Capital*, 316 F.3d at 1052. Further, the Ninth Circuit “differentiate[s] between pleadings
13 attempting to amend claims from those seeking to amend parties.” *Union Pac. R. Co. v. Nevada*
14 *Power Co.*, 950 F.2d 1429, 1432 (9th Cir. 1991) (emphasis in original).

15 Here, plaintiffs filed their complaint against defendant Shasta-Cascade, doing
16 business as North Valley Collection Bureau, alleging violations of the Fair Debt Collection
17 Practice Act, 15 U.S.C. § 1692 *et seq.*, and the Rosenthal Fair Debt Collection Practices Act, Cal.
18 Code Civ. Proc. § 1788 *et seq.* ECF No. 20; *see generally* ECF No. 1. In March 2016, plaintiffs
19 amended the complaint to include Linda Benner, owner of Shasta-Cascade, after receiving no
20 response from Shasta-Cascade. *Id.*; *see generally* ECF No. 15. In the process of serving the
21 defendants with the First Amended Complaint, plaintiffs learned that defendant Shasta-Cascade
22 had been sold by John Franklin, the agent for service of process. *Id.* Plaintiffs also learned that
23 defendant Shasta-Cascade is now operating as Statewide Collections Inc. (Statewide). Plaintiffs
24 thus now seek to add both Statewide and Franklin as defendants.

25 Plaintiffs’ motion does not stem from bad faith and will not cause undue delay, as
26 plaintiffs immediately sought to amend the complaint after learning defendant Shasta-Cascade
27 now operates as Statewide. There is also no prejudice to any opposing party as neither of the
28 defendants named in the First Amended Complaint have appeared or responded. Similarly,

1 amendment is not futile if the naming of the new parties allows the case to proceed. If the new
2 parties do not appear, then plaintiffs may move for entry of default and default judgment.

3 Accordingly, the court GRANTS plaintiffs' ex parte application for leave to
4 amend. Plaintiffs shall file the proposed Second Amended Complaint as a separate document on
5 the court's docket of this case within seven (7) days. The Initial Scheduling Conference is reset
6 for July 21, 2016 at 2:30 p.m., with a Joint Status Report filed in advance as required by this
7 court's scheduling order and the local rules.

8 This order resolves ECF No. 20.

9 IT IS SO ORDERED.

10 DATED: May 3, 2016.

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13 UNITED STATES DISTRICT JUDGE
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