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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

KERRIE STONE, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

ADVANCE AMERICA, CASH  
ADVANCE CENTERS, INC.;  
ADVANCE AMERICA, CASH  
ADVANCE CENTERS OF  
CALIFORNIA, LLC; and DOES 1  
through 50, inclusive,

Defendant.

CASE NO. 08cv1549 WQH (WMc)

**ORDER**

HAYES, Judge:

The matter before the Court is the “Motion to Add Additional Class Representatives”  
(Doc. # 35)

**Background**

On July 16, 2008, Plaintiff Kerrie Stone initiated this action by filing a class action  
complaint in the Superior Court of California, County of San Diego. *Not. of Removal*, p. 1-2.  
On August 21, 2008, Defendants removed the complaint to this Court (Doc. # 1) on grounds  
that this Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28  
U.S.C. 1332(d). On October 10, 2008, Plaintiff filed the first amended complaint (“FAC”)  
(Doc. # 16). The FAC alleges causes of action for (1) violation of the California Deferred  
Deposit Transaction Law (“CDDTL”), Cal. Fin. Code section 23000, *et seq.*, (2) violation of

1 the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code section 17200, *et*  
2 *seq.*, and (3) violation of the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ.  
3 Code section 1760, *et seq.*

4 On June 18, 2009, Plaintiff filed the “Motion to Add Additional Class Representatives.”  
5 Plaintiff seeks to name Frank Brightwell and Justina Rodriguez as additional proposed class  
6 representatives. Plaintiff contends that Brightwell and Rodriguez “took out payday loans with  
7 defendants during the four-year limitations period, and both claim that defendants engaged in  
8 illegal practices with respect to those loans.” *Mot. to Add*, p. 1. Plaintiff contends that  
9 “Plaintiff’s substantive claims will remain precisely the same; the only change is that  
10 Brightwell and Rodriguez will become additional named plaintiffs.” *Id.* at 3-4. Plaintiff  
11 contends that adding Brightwell and Rodriguez will not prejudice Defendants “since discovery  
12 has not yet begun.” *Id.* at 1. Plaintiff “requests that the Court permit plaintiff to offer  
13 Brightwell and Rodriguez as additional class representatives without requiring them to file a  
14 Second Amended Complaint,” in order to “avoid re-opening the pleadings.” *Id.* at 3. Plaintiff  
15 “requests leave to file an amended complaint under Fed. R. Civ. P. 15(a)” if the Court  
16 “determines that Brightwell and Rodriguez need to in become named plaintiffs in order to  
17 serve as [] class representatives.” *Id.*

18 Defendants oppose the Motion on grounds that “plaintiff is seeking to amend her  
19 complaint without complying with the requirements of Federal Rule of Civil Procedure 15(a).”  
20 *Opposition*, p. 2. Defendants contend that formal amendment should be required because  
21 “Defendants have a right to know what facts, circumstances, and claims these individuals are  
22 alleging.” *Id.* at 3. Defendants contend that “even if Plaintiff’s motion were considered as a  
23 motion for leave to amend the complaint, it is improper because Plaintiff has not attached the  
24 proposed amended pleading.” *Id.* at 5. Defendants contend that the Motion to add Brightwell  
25 and Rodriguez “without a proposed amended pleading should be denied,” and that “Plaintiff  
26 should be required to file a proper motion for leave to amend the complaint accompanied by  
27 a proposed pleading so that Defendants have sufficient information to determine how to  
28 respond and the Court has sufficient information to rule on the motion.” *Id.* at 6.

1 **Applicable Law**

2 Rule 15 of the Federal Rules of Civil Procedure mandates that leave to amend “be freely  
3 given when justice so requires.” Fed. R. Civ. P. 15(a). This policy is applied with  
4 “extraordinary liberality.” *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079  
5 (9th Cir. 1990). Once an answer to the complaint has been filed, as is the case here, courts  
6 may deny leave to amend where the proposed amendment would be futile, where it is sought  
7 in bad faith, where it will create undue delay, or where “undue prejudice to the opposing party  
8 will result.” *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir. 1973); *see also Johnson*  
9 *v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992); *Saul v. United States*, 928  
10 F.2d 829, 843 (9th Cir. 1991).

11 **Ruling of the Court**


12 If the Court were to permit Plaintiff to add Brightwell and Rodriguez as additional  
13 proposed class representatives without formal amendment, there would be no pleading setting  
14 forth the specific facts or claims asserted by Brightwell and Rodriguez, and Defendants would  
15 not have an opportunity to respond to the complaint as to Brightwell and Rodriguez. Plaintiff  
16 does not assert that she will be prejudiced if required to file a formal second amended  
17 complaint adding Brightwell and Rodriguez as additional proposed class representatives. The  
18 Court declines to permit Plaintiff to add Brightwell and Rodriguez as additional proposed class  
19 representatives without formal amendment.

20 The Federal Rules of Civil Procedure and the Local Rules do not require that a party  
21 seeking leave to amend attach a copy of the proposed amended complaint. Plaintiff’s failure  
22 to attach a proposed second amended complaint to this Motion is not fatal to Plaintiff’s request  
23 for leave to file a second amended complaint, particularly in light of Plaintiff’s assertion that  
24 “Plaintiff’s substantive claims will remain precisely the same.” *Mot. to Add*, p. 3. Defendants  
25 do not assert that granting Plaintiff leave to file a second amended complaint would be futile,  
26 is sought in bad faith, would create undue delay, or would otherwise prejudice Defendants.  
27 The Court grants Plaintiff leave to file a second amended complaint which adds Brightwell and  
28 Rodriguez as proposed class representatives pursuant to Rule 15(a) of the Federal Rules of

1 Civil Procedure.

2 IT IS HEREBY ORDERED that the Motion to Add Additional Class Representatives  
3 (Doc. # 35) is **GRANTED**. Plaintiff may file a second amended complaint that adds Franks  
4 Brightwell and Justina Rodriguez as additional proposed class representatives within thirty  
5 (30) days of the date of this Order.

6 DATED: July 24, 2009

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8 **WILLIAM Q. HAYES**  
9 United States District Judge

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