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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JORDAN KOHLER, INDIVIDUALLY
12 AND ON BEHALF OF ALL OTHERS
13 SIMILARLY SITUATED,

Plaintiff,

14 v.

15 GREYSTAR REAL ESTATE
16 PARTNERS, LLC,

17 Defendant.
18

Case No. 15-cv-02195 JAH(KSC)

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS [DOC. #10]**

19 **INTRODUCTION**

20 Currently pending before this Court is the motion to dismiss Plaintiff Jordan
21 Kohler's ("Plaintiff") complaint filed by Defendant Greystar Real Estate Partners, LLC
22 ("Defendant"). The motion has been fully briefed by the parties. After a careful review of
23 the Defendant's motion, this Court **GRANTS** Defendant's motion to dismiss.

24 **BACKGROUND**

25 Plaintiff filed the instant complaint on October 1, 2015. (See Doc. #1). Plaintiff
26 alleges that on or about April 15, 2015, Plaintiff incurred a purported residential rent debt
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1 to Defendant. (Compl. ¶ 26). On or about April 7, 2015, Plaintiff received an email from
2 Defendant informing Plaintiff that the rent was due. (Id. at ¶ 29). Plaintiff alleges that the
3 rent included a \$75 late fee. (Id. at ¶ 30). Plaintiff claims this late fee is a liquidated damage
4 in violation of California’s Unfair Competition Law, Business & Professions Code §
5 17200 et seq. (“UCL”) as well as the Rosenthal Fair Debt Collection Practices Act, Cal.
6 Civ. Code § 1788, et seq. (“RFDCPA”). (See Compl.)

7 Plaintiff asserts a class action complaint seeking damages and injunctive relief. (Id.)
8 Plaintiff is a resident and citizen of the State of California. (Compl. ¶13). Defendant is a
9 corporation incorporated in the State of Delaware, with its principal place of business in
10 South Carolina. (Id. at ¶14)

11 Defendant filed the instant motion to dismiss Plaintiff’s complaint. (See Doc. # 10).
12 Plaintiff filed an opposition to the motion. (See Doc. # 11). Defendant filed a reply. (See
13 Doc. # 12). The Court took the matter under submission pursuant to Local Rule 7.1.

14 DISCUSSION

15 Defendant moves to dismiss the instant complaint on the grounds that the complaint
16 fails to state a claim and fails to join a necessary or indispensable party pursuant to Federal
17 Rules of Civil Procedure 12(b)(6) and 12(b)(7). (See Doc. #10 at 11). In addition,
18 Defendant asserts that the claim should be dismissed and/or stayed pursuant to the
19 Colorado River Doctrine. (Id.)

20 **1. Legal Standards**

21 **a. Rule 12(b)(6)**

22 A motion to dismiss under Rule 12(b)(6) tests the sufficiency of the complaint.
23 Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal is warranted under
24 Rule 12(b)(6) where the complaint lacks a cognizable legal theory. Robertson v. Dean
25 Witter Reynolds, Inc., 749 F.2d 530, 534 (9th Cir. 1984); see Neitzke v. Williams, 490
26 U.S. 319, 326 (1989) (“Rule 12(b)(6) authorizes a court to dismiss a claim on the basis

1 of a dispositive issue of law.”). Alternatively, a complaint may be dismissed where it
2 presents a cognizable legal theory yet fails to plead essential facts under that theory.
3 Robertson, 749 F.2d at 534. While a plaintiff need not give “detailed factual allegations,”
4 he must plead sufficient facts that, if true, “raise a right to relief above the speculative
5 level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 545 (2007).

6 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
7 accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal,
8 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 547). A claim is facially
9 plausible when the factual allegations permit “the court to draw the reasonable inference
10 that the defendant is liable for the misconduct alleged.” *Id.* In other words, “the
11 nonconclusory ‘factual content,’ and reasonable inferences from that content, must be
12 plausibly suggestive of a claim entitling the plaintiff to relief. Moss v. U.S. Secret Service,
13 572 F.3d 962, 969 (9th Cir. 2009). “Determining whether a complaint states a plausible
14 claim for relief will ... be a context-specific task that requires the reviewing court to draw
15 on its judicial experience and common sense.” Iqbal, 129 S.Ct. at 1950.

16 In reviewing a motion to dismiss under Rule 12(b)(6), the court must assume the
17 truth of all factual allegations and must construe all inferences from them in the light most
18 favorable to the nonmoving party. Thompson v. Davis, 295 F.3d 890, 895 (9th Cir.
19 2002); Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). However,
20 legal conclusions need not be taken as true merely because they are cast in the form of
21 factual allegations. Ileto v. Glock, Inc., 349 F.3d 1191, 1200 (9th Cir. 2003); Western
22 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). When ruling on a motion
23 to dismiss, the Court may consider the facts alleged in the complaint, documents attached
24 to the complaint, documents relied upon but not attached to the complaint when
25 authenticity is not contested, and matters of which the Court takes judicial notice. Lee
26 v. City of Los Angeles, 250 F.3d 668, 688-89 (9th Cir. 2001). If a court determines that

1 a complaint fails to state a claim, the court should grant leave to amend unless it
2 determines that the pleading could not possibly be cured by the allegation of other facts

3 **b. Rule 12(b)(7)**

4 Federal Rule of Civil Procedure 12(b)(7) permits dismissal of a claim for failure to
5 join a party under Rule 19. “Rule 19 requires the joinder of a party whose joinder will not
6 deprive the court of jurisdiction if (1) in the person's absence complete relief cannot be
7 accorded among those already parties, or (2) the person claims an interest relating to the
8 subject of the action and is so situated that the disposition of the action in the person's
9 absence may ... (ii) leave any of the persons already parties subject to a substantial risk of
10 incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed
11 interest.” Trans Ocean Container Corp. v. Intercargo Ins. Co., No. C 95-2187 FMS, 1995
12 WL 870958, at *1 (N.D. Cal. Dec. 20, 1995). While no precise formula exists for
13 determining whether a party is necessary to an action, the determination will be heavily
14 influenced by the facts and circumstances of each case. The burden of proof is on the
15 moving party to show one of the circumstances in Rule 19 exists. Id.

16 **2. Analysis**

17 Plaintiff's complaint asserts two causes of action for violations of: (1) California's
18 Unfair Competition Law, Business & Professions Code § 17200 et seq. (the “UCL”), and
19 (2) the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788, et seq. (the
20 “Rosenthal Act”). Defendant moves to dismiss Plaintiff's causes of action for failure to
21 state a claim and failure to join necessary parties.

22 First, the Court will analyze the UCL and the Rosenthal Act claims. Next, the Court
23 will address the issue of joinder. As the Court finds dismissal proper, it declines to rule on
24 the Colorado Water Doctrine at this time.

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1 under the Rosenthal Act. Plaintiffs have not established that Creekside Meadows, as a
2 landlord, extends credit to tenants.” Leasure v. Willmark Communities, Inc., No. 11-CV-
3 00443 BEN DHB, 2013 WL 6097944, at *4 (S.D. Cal. Mar. 14, 2013)

4 Accordingly, this Court **GRANTS** Defendant’s motion to dismiss as the Rosenthal
5 Act claim with leave to amend.

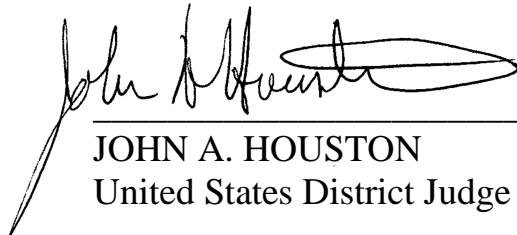
6 **c. Joinder**

7 The Court finds that Plaintiff has failed to name the necessary parties in their
8 complaint. (See Compl.) Plaintiff names Defendant but conflates Greystar, the property
9 management company, with the property owners themselves. (See Doc. #10 at 22).
10 Greystar does not retain the late fees for itself, and rather is employed by the owners of the
11 property. (See Doc. #10 at 20-21). This Court finds that Plaintiff’s complaint fails to join
12 the necessary parties as any decision by this Court will impact the property owner.
13 Accordingly, Defendant’s motion to dismiss for failure to join is granted with leave to
14 amend.

15 **CONCLUSION AND ORDER**

16 Based on the foregoing, **IT IS HEREBY ORDERED** that defendant’s motion to
17 dismiss [Doc. # 10] is **GRANTED** and the instant complaint is **DISMISSED** without
18 prejudice and with leave to amend. Plaintiff may file an amended complaint that cures the
19 deficiencies outlined herein within thirty (30) days of the date this Order is filed.

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21 DATED: March 31, 2017

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24 JOHN A. HOUSTON
25 United States District Judge