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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

VINCENT MANIKAN,  
  
Plaintiff,  
  
v.  
  
PACIFIC RIDGE NEIGHBORHOOD  
HOMEOWNERS ASSOCIATION, N.N.  
JAESCHKE, INC., PETERS &  
FREEDMAN, L.L.P., AND DOES 1-10,  
  
Defendants.

Case No.: 3:17-cv-00467-BEN-BLM

**ORDER GRANTING PLAINTIFF’S  
MOTION TO AMEND COMPLAINT  
AND ADD NEW PARTIES**

Before the Court is Plaintiff’s Motion to Amend Complaint and Add New Parties. Defendants Pacific Ridge Neighborhood Homeowners’ Association (“Pacific Ridge”) and N.N. Jaeschke, Inc. (“Jaeschke”) oppose Plaintiff’s Motion, arguing that amendment would be futile and that it would prejudice Defendants. Defendant Peters & Freedman, L.L.P. (“Peters & Freedman”) has not responded to the Motion. Having considered the arguments and the law, the Court **GRANTS** Plaintiff’s Motion.

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1 **I. BACKGROUND<sup>1</sup>**

2 Plaintiff’s claims arise primarily from an incident that took place on September 2,  
3 2016, when a man now identified as Mr. Dakotah Douglas broke through Plaintiff’s back  
4 gate and began pounding on the windows of Plaintiff’s house. (Compl. ¶¶ 32-35) (Mot.  
5 to Amend, Ex. 1). The police were called, and after their arrival, Mr. Douglas identified  
6 himself as an off-duty police officer hired to serve a Notice of Default (“NOD”) on the  
7 Plaintiff. (*Id.* ¶¶ 36-37). The NOD had a stamped recordation date of April 9, 2012 and  
8 cited a balance owed of \$2,597.04. (*Id.* ¶¶ 38, 40 (emphasis added)). Across the top of  
9 the NOD, it stated in all capital letters that “Peters & Freedman, LLP is acting in the  
10 function of a debt collector, any information obtained will be used for that purpose.” (*Id.*  
11 ¶ 39). Plaintiff spoke to a representative from Peters & Freedman, who explained that the  
12 balance on the NOD was provided by Defendant Jaeschke as due to Defendant Pacific  
13 Ridge. (*Id.* ¶ 42).

14 Plaintiff filed a complaint in San Diego County Superior Court on February 1,  
15 2017, alleging two claims for relief. The first claim alleges a violation of the Fair Debt  
16 Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.*, against Defendant Peters  
17 & Freedman. The second claim alleges a violation of the Rosenthal Fair Debt Collection  
18 Practices Act (“RFDCPA”), California Civil Code §§ 1788-1788.32, against all  
19 Defendants.

20 The case was removed from state court on March 7, 2017. (ECF No. 1). Jaeschke  
21 and Pacific Ridge filed a Motion to Dismiss under Federal Rule of Civil Procedure  
22 12(b)(6) on March 14, 2017. (ECF No. 3). Peters & Freedman filed a Motion to Dismiss  
23 under Rule 12(b)(6) on March 23, 2017. (ECF No. 4). On April 17, 2017, Plaintiff filed  
24 a Motion to Amend Complaint and Add New Parties. (ECF No. 10). Plaintiff attached  
25 both a proposed First Amended Complaint (“FAC”) and a “redlined” copy as exhibits to  
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27 <sup>1</sup> The Court is not making any findings of fact, merely summarizing the relevant factual  
28 and procedural information in order to evaluate the motion at hand.

1 his motion. (ECF No. 10, Exs. 1-2). Defendants Pacific Ridge and Jaeschke  
2 (collectively, “Defendants”) filed a Response in Opposition to Plaintiff’s Motion (ECF  
3 No. 14) and Plaintiff replied to this response (ECF No. 16).

## 4 II. DISCUSSION

5 Federal Rule of Civil Procedure 15(a) provides that once the deadline to amend a  
6 pleading as a matter of course passes, as is the case here, a party may only amend his or  
7 her complaint by leave of the court or by written consent of the adverse party. Fed. R.  
8 Civ. P. 15(a)(2); *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 185-86 (9th Cir. 1987).  
9 However, leave to amend is liberally granted, and courts should be guided by the  
10 “underlying purpose of Rule 15—to facilitate decision on the merits rather than on  
11 pleadings or technicalities.” *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981).  
12 The Supreme Court identified five factors that courts should consider when deciding  
13 whether to grant a motion for leave to amend: (1) undue delay, (2) bad faith or dilatory  
14 motive, (3) futility of amendment, (4) undue prejudice to opposing party, and (5)  
15 previous amendments. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also Allen v. City*  
16 *of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990). The Ninth Circuit has held that  
17 prejudice to the opposing party carries the greatest weight. *Eminence Capital, LLC v.*  
18 *Aspeon, Inc.*, 316 F.3d 1049, 1052 (9th Cir. 2004). The party opposing amendment bears  
19 the burden of showing prejudice. *DCD Programs*, 833 F.2d at 186-87. “Absent  
20 prejudice, or a strong showing of any of the remaining *Foman* factors, there exists a  
21 *presumption* under Rule 15(a) in favor of granting leave to amend.” *Eminence Capital*,  
22 316 F.3d at 1052 (emphasis in original). However, “[f]utility alone can justify the denial  
23 of a motion to amend.” *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2004).

24 In his proposed FAC, Plaintiff seeks to join a defendant, Advanced Attorney  
25 Services (“AAS”), as the employer of Mr. Douglas. (Mot. to Amend, Ex. 2). Plaintiff  
26 seeks to add AAS to his FDCPA claim. The FDCPA would be alleged against Peters &  
27 Freedman and AAS. He seeks to remove Peters & Freedman from his RFDCPA claim  
28 and add AAS to this claim, leaving the RFDCPA claim alleged against Pacific Ridge,

1 Jaeschke, and AAS. Finally, he seeks to add a new state law claim for trespass against  
2 AAS only.

3 Defendants urge this Court to deny Plaintiff’s motion for three reasons: First, they  
4 contend that amendment would be futile because Defendants’ activities do not constitute  
5 “collection of a debt” under the FDCPA or the RFDCPA. Second, they contend that  
6 amendment would prejudice Defendants. And finally, they argue that Plaintiff failed to  
7 set forth an adequate basis for subject matter jurisdiction over his proposed state law  
8 trespass claim. The Court reviews each argument in turn.

9 A. Amendment Is Not Futile

10 An amendment to a pleading is considered “futile” if it would clearly be subject to  
11 dismissal. *DCD Programs*, 833 F.2d at 188. Defendants ask the Court to deny Plaintiff’s  
12 motion because amendment would be futile. Defendants argue that FDCPA and  
13 RFDCPA do not apply to them because they were not and are not “debt collectors” or  
14 attempting to “collect a debt” as defined by the statutes. (Opp’n at 3). Plaintiff argues  
15 that one of his amendments, the addition of allegations regarding violation of 15 U.S.C. §  
16 1692f(6), specifically applies to the enforcement of security interests such as issuing a  
17 Notice of Default. Plaintiff argues this will cure any futility that Defendants argue.

18 A recent Ninth Circuit decision addressed application of 15 U.S.C. § 1692f(6). In  
19 *Dowers v. Nationstar Mortgage, LLC*, 852 F.3d 964, 971 (9th Cir. 2017), plaintiffs  
20 brought four FDCPA claims arising from the defendants’ conduct while attempting to  
21 collect payments on plaintiff’s loan, including entering two notices of default. The  
22 district court dismissed all claims, finding that defendants’ activity enforcing a security  
23 interest did not constitute “debt collection” under the FDCPA. *Id.* at 969. However, the  
24 Ninth Circuit reversed and reinstated a single claim, violation of section 1692f(6) because  
25 this section specifically applies to activities enforcing security interests. *Id.* at 971.  
26 “Unlike [other sections], the definition of debt collector under § 1692f(6) includes a  
27 person enforcing a security interest.” *Id.*

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1           The case at hand is similar to *Dowers*. Although it may be the case that many of  
2 the other subsections of 15 U.S.C. § 1692, *et seq.*, do not apply to Defendants’ activity, it  
3 appears that section 1692f(6) does. Defendants do not address the effect of *Dowers*.  
4 Because at least one claim is not clearly subject to dismissal, the Court finds that  
5 amendment would not be futile at this stage. *DCD Programs*, 833 F.2d at 188.

6           B. Defendants Have Not Shown Amendment Will Unduly Prejudice Them

7           Defendants argue that joining AAS as a defendant would prejudice them because  
8 Defendants have pending motions to dismiss. (Opp’n at 7). The party opposing  
9 amendment bears the burden of showing prejudice. *DCD Programs*, 833 F.2d at 186-87.  
10 In *DCD Programs*, the Ninth Circuit found that the defendants would not be prejudiced  
11 by the plaintiff filing a fourth amended complaint because litigation was still in its early  
12 stages—no trial date had been set and the case was currently in the discovery stage. *Id.* at  
13 188. In contrast, in *Acri v. International Association of Machinists & Aerospace*  
14 *Workers*, 781 F.2d 1393, 1398-99 (9th Cir. 1986), the Ninth Circuit upheld a district  
15 court’s denial of a motion to amend because the motion to amend was made after  
16 summary judgment arguments had been submitted and heard, and allowing amendment  
17 would prejudice the defendant because of the necessity for further discovery.

18           Defendants do not explain how allowing Plaintiff to amend his complaint would  
19 prejudice them. Additionally, this case is still in its early stages. There has been no  
20 discovery; only a complaint, motions to dismiss, and motion to remand have been filed.  
21 Because Defendants have only made conclusory allegations of prejudice, this argument  
22 fails.

23           C. The Court Exercises Supplemental Jurisdiction Over the Trespass Claim

24           The claims for relief in this case arise primarily from one incident which took  
25 place on September 2, 2016. (Compl. ¶¶ 31-38). All of Plaintiff’s claims revolve around  
26 the issuance and delivery of a Notice of Default with an amount in arrears that was over  
27 four years old. (*Id.* at ¶ 38). Plaintiff seeks to add AAS as a defendant because it is the  
28 employer of the process server, Dakotah Douglas, hired to serve the Notice of Default.

1 (Mot. to Amend at 4). During service of the Notice of Default, Plaintiff alleges Mr.  
2 Douglas damaged Plaintiff’s property and entered his backyard. (Mot. to Amend, Ex. 2).  
3 Plaintiff seeks to add a trespass claim to reflect these damages and intrusion. (*Id.*)  
4 Defendants argue that Plaintiff fails to provide an independent basis for subject matter  
5 jurisdiction over the trespass claim. (Opp’n at 7).

6 Federal Rule of Civil Procedure 20(a) allows the permissive joinder of parties with  
7 two requirements: (1) the party is involved in the same “transaction or occurrence” and  
8 (2) the claims involve a common question of law or fact. Fed. R. Civ. P. 20(a). Here,  
9 AAS is joined because of its involvement in the incident on September 2, 2016. This  
10 constitutes the same transaction or occurrence from which all of Plaintiff’s claims arise.  
11 The case involves a common issue of law and fact: whether § 1692f(6) applies to the  
12 activities of AAS, Peters & Freedman, Jaeschke, and Pacific Ridge, and whether their  
13 actions constitute a violation of this subsection.

14 With AAS as a properly joined defendant, Plaintiff may bring other related claims  
15 against AAS. 28 U.S.C. § 1367 permits a federal court to exercise supplemental  
16 jurisdiction “over all other claims that are so related to claims in the action within such  
17 original jurisdiction that they form part of the same case or controversy.” “Such  
18 supplemental jurisdiction shall include claims that involve the joinder or intervention of  
19 additional parties.” *Id.* The trespass claim is clearly related to the debt collection  
20 claims, as the trespass claim arises out of Defendants’ alleged attempt to collect a debt.  
21 Therefore, the Court exercises jurisdiction over Plaintiff’s state law trespass claim.

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1 **III. CONCLUSION**

2 Defendants have not shown prejudice, undue delay, bad faith, dilatory motive, or  
3 futility. Absent a showing of any of these factors, a court should grant a plaintiff's  
4 request for leave to amend. *Eminence Capital*, 316 F.3d at 1052. Such is the case here.  
5 The Court **GRANTS** Plaintiff's Motion to Amend Complaint and Add Parties. Plaintiff  
6 is given leave to file his First Amended Complaint within **seven (7) days** of this order.

7 **IT IS SO ORDERED.**

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9 Dated: July 21, 2017

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11 Hon. Roger T. Benitez  
12 United States District Judge  
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