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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
RAJMP, INC.; ESTATE OF ROBERT A.  
POLITTE et al.,  
Defendants.

Case No.: 17-cv-00515-AJB-WVG

**ORDER GRANTING PLAINTIFF’S  
MOTION TO AMEND COMPLAINT**

(Doc. No. 65)

Presently before the Court is Plaintiff the United States of America’s (“Plaintiff”) motion for leave to amend its complaint. (Doc. No. 65-1.) Defendants RAJMP, Inc., Estate of Robert A. Politte, Joan M. Politte, Pacific Western Bank, Pofaco, Inc., and County of San Diego (collectively referred to as “Defendants”) did not file an opposition. Pursuant to Civil Local Rule 7.1.d.1, the Court finds the instant matter suitable for decision on the papers. Thus, the motion hearing set for August 17, 2017, is hereby **VACATED**. For the following reasons, the Court **GRANTS** Plaintiff’s motion to amend.

**BACKGROUND**

On March 15, 2017, Plaintiff filed a complaint against Defendants to reduce federal tax assessments to judgment and foreclose federal tax liens on real property. (Doc. No. 1.) Specifically, at issue are nine parcels of real property against which the United States seeks

1 to sell as part of this action. (*Id.* ¶ 20.) Plaintiff also requests to collect Defendant RAJMP’s  
2 alleged federal tax liabilities from property of Defendants the Estate of Robert and Joan  
3 Politte because they are the alter egos of RAJMP. (*Id.* ¶ 1.)

4 On April 5, 2016, Robert Politte died. (Doc. No. 65-1 at 2.) As Mrs. Politte is the  
5 surviving spouse of Mr. Politte, Plaintiff named Mrs. Politte as a defendant in this action  
6 in her capacity as the personal representative of the estate. (*Id.* at 3.)

7 On June 30, 2017, Plaintiff filed the instant motion, its motion to amend and correct  
8 the complaint to add Kelly M. Politte and Ted. R. Politte as Defendants in this action in  
9 their capacity as Co-Personal Representatives of the Estate of Robert A. Politte. (*Id.*)  
10 Pursuant to the briefing schedule set by Judge Battaglia, Defendants’ opposition to the  
11 present motion was due July 13, 2017. (Doc. No. 66.) However, Defendants failed to file  
12 an opposition or a statement of non-opposition.<sup>1</sup> On July 31, 2017, Plaintiff filed a motion  
13 for default judgment against Defendant POFACO. (Doc. No. 73.)

#### 14 **LEGAL STANDARD**

15 Pursuant to Federal Rule of Civil Procedure 15, leave to amend should be “freely”  
16 given when “justice so requires.” Fed. R. Civ. P. 15(a)(2). “This policy is to be applied  
17 with extreme liberality.” *Eminence Capital, LLC, v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th  
18 Cir. 2003) (citation and internal quotation marks omitted). In *Foman v. Davis*, 371 U.S.  
19 178 (1962), the Supreme Court offered several factors for district courts to consider in  
20 deciding whether to grant a motion to amend under Rule 15(a):

21 In the absence of any apparent or declared reason—such as  
22 undue delay, bad faith or dilatory motive on the part of the  
23 movant, repeated failure to cure deficiencies by amendments  
24 previously allowed, undue prejudice to the opposing party by  
virtue of allowance of the amendment, futility of amendment,

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26 <sup>1</sup> Pursuant to Local Rule 7.1.f.3(a) if a party chooses not to oppose a motion, it must file a  
27 written statement to that effect. Moreover, if an opposing party fails to file an opposition,  
28 that failure may “constitute a consent to the granting of a motion or other request for ruling  
by the court.” *Id.* at 3(c).

1 etc.—the leave sought should, as the rules require, be ‘freely  
2 given.’

3 *Id.* at 182. Additionally, “[a]bsent prejudice, or a strong showing of any of the remaining  
4 *Foman* factors, there exists a *presumption* under Rule 15(a) in favor of granting leave to  
5 amend.” *Eminence Capital*, 316 F.3d at 1052.

### 6 DISCUSSION

7 Plaintiff moves to amend the complaint to add Kelly M. Politte and Ted R. Politte,  
8 children of Robert A. Politte, as defendants in this action in their capacity as Co-Personal  
9 Representatives of the Estate and to remove Joan M. Politte in her capacity as the Personal  
10 Representative of the Estate. (Doc. No. 65-1 at 3.) In support of this motion, Plaintiff argues  
11 that Defendants would not be unduly prejudiced as this motion was filed early in the  
12 litigation. (*Id.* at 5.) Additionally, the issues in the action will remain the same. (*Id.*)  
13 Furthermore, Plaintiff asserts that it does not seek amendment with bad faith or any dilatory  
14 motive as they are simply trying to ensure that the proper persons are named in the instant  
15 action. (*Id.* at 6.)

16 Based on the *Foman* factors, the Court finds amendment appropriate. Here, the Court  
17 finds no indication that Plaintiff seeks to amend so as to delay the case; thus there is no  
18 evidence of bad faith. *See Abels v. JBC Legal Grp., P.C.*, 229 F.R.D. 152, 156 (N.D. Cal.  
19 2005) (holding that bad faith is evident when amendment is introduced solely for delay or  
20 improper purpose). Moreover, Plaintiff did not delay in filing its motion. Plaintiff states  
21 that they brought this motion within two weeks of learning that the court had appointed  
22 Kelly and Ted Politte as Co-Personal Representatives of the Estate. (Doc. No. 65-1 at 6.)  
23 Next, as to the most determinative factor, Defendants will not be prejudiced by this  
24 amendment. *Eminence Capital*, 316 F.3d at 1052. Currently, this case is in its early stages  
25 of litigation and this motion is filed before a scheduling order has been issued, no discovery  
26 has commenced, and no trial date has been set. *See Solomon v. N. Am. Life & Cas. Ins. Co.*,  
27 151 F.3d 1132, 1139 (9th Cir. 1998) (leave to amend sought on the eve of discovery  
28 deadline was properly denied). Finally, the Court does not find that amendment would be

1 futile as the issues in the complaint are to stay the same. *See Miller v. Rykoff-Sexton, Inc.*,  
2 845 F.2d 209, 214 (9th Cir. 1988) (holding that futility is found only if “no set of facts can  
3 be proved under the amendment to the pleadings that would constitute a valid and sufficient  
4 claim or defense”).


5 For all these reasons, and finding that this is Plaintiff’s first motion to amend the  
6 complaint, the Court concludes that the *Foman* factors weigh in favor of amendment.  
7 Accordingly, Plaintiff’s motion is **GRANTED**.

8 **CONCLUSION**

9 As explained more fully above, the Court **GRANTS** Plaintiff’s motion to amend the  
10 complaint. In light of this order, Plaintiff is instructed to file its amended complaint within  
11 **ten (10) days** of this order and serve it on Kelly and Ted Politte within **ninety (90) days**  
12 after it is filed pursuant to Federal Rule of Civil Procedure 4(m).

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14 **IT IS SO ORDERED.**

15 Dated: August 3, 2017

16   
17 Hon. Anthony J. Battaglia  
18 United States District Judge  
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