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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 KAHILA H. HEDAYATZADEH,
12 Plaintiff,
13 v.
14 CITY OF DEL MAR,
15 Defendant.

Case No.: 19-cv-842-BEN (BLM)

**ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO ADD
ADDITIONAL CLASS PLAINTIFF**

[ECF No. 30]

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17 This matter comes before the Court on Plaintiff Kahlia H. Hedayatzadeh's
18 ("Plaintiff") Motion Requesting Leave of Court to Amend the Class Action Complaint
19 and Add an Additional Lead Plaintiff. ECF No. 30. For the reasons set forth below the
20 motion is **DENIED**.

21 **I. BACKGROUND**

22 Plaintiff alleges Defendant City of Del Mar, California, violated her Fourth
23 Amendment rights by applying chalk marks on the tire of her vehicle to enforcing
24 parking space time limits. Compl., ECF No. 1, ¶ 24. Plaintiff alleged that between May
25 3, 2017, and May 3, 2019, she received "at least one or two parking tickets" for
26 exceeding the time limit on parking spots imposed in the City of Del Mar. Pl.'s Decl.,
27 ECF. No. 19-4, ¶ 2-3. She further alleged Defendant regularly and systematically uses a
28 process of "chalking," which consists of applying a small chalk mark to a car tire, to

1 determine whether a car has over-stayed the parking spot time limit. Compl., ECF No. 1,
2 ¶¶ 22-23. Plaintiff alleged Defendant chalks vehicles without consent, purportedly
3 violating the Fourth Amendment’s prohibition on unreasonable searches and seizures. *Id.*
4 at ¶ 24. Defendant admits it uses chalking to enforce parking regulations but denies that
5 chalking violates the Fourth Amendment. Opp’n., ECF No. 20, at 2.

6 While Plaintiff alleged she received “at least one or two” parking tickets, she has
7 “not yet been able to locate any copies of these tickets.” Pl.’s Decl., ECF No. 19-4, ¶ 3.
8 To this end, substantial discovery has already occurred. Opp’n, ECF No. 20, 2.
9 Defendant has located and produced records for thousands of individuals cited during the
10 applicable time frame. *Id.* Defendant has likewise searched for and produced
11 corresponding payment records for those thousands of citations. *Id.* Despite this
12 substantial effort, there is no record Defendant ever issued a ticket to Plaintiff, and no
13 record Plaintiff ever paid a parking ticket to Defendant.

14 Nonetheless, Plaintiff sought to certify a class of at least 5,500 people who have
15 had their tires chalked and a subclass of at least 4,000 people who have allegedly paid
16 parking tickets. Mot., ECF No. 19, 6-13. On July 23, 2020, the Court denied her motion
17 for class certification. Order, ECF No. 23. The Court found that she did not meet the
18 typicality requirement of Federal Rule of Civil Procedure 23(a) such that she would be a
19 proper representative party because her standing in this case was so tenuous that it
20 threatened to become the focal point of the litigation. *Id.* at 7. Based only on her
21 pleadings, the Court agreed Plaintiff had *alleged* standing, but it also expressed serious
22 doubt that Plaintiff would be able to prove her standing at later stages of litigation when
23 the Court looked beyond the pleadings for evidence supporting her injury in fact. *Id.*

24 Enter Kaveh Hedayatzadeh, Plaintiff’s brother, who – only one month after the
25 Court’s order denying class certification – happened to receive a parking ticket from
26 Defendant, allegedly based on Defendant’s use of chalking on his car tire. Mot., ECF
27 No. 30, 2. Kaveh Hedayatzadeh has a copy of his citation, which he allegedly paid.
28 Khashayar Decl., ECF No. 30-1, Ex. A. Plaintiff asks the Court to grant her leave to

1 amend her Complaint, adding her brother as an additional representative plaintiff. *Id.*
2 Defendant opposes, arguing (1) Plaintiff’s lack of standing bars amendment, and (2) the
3 factors set forth in *Foman v. Davis*, 371 U.S. 178 (1962), weigh against granting leave to
4 amend.

5 **II. LEGAL STANDARD**

6 Once a defendant has answered, a plaintiff may only amend the complaint by leave
7 of court, or with the written consent of the adverse party. Fed. R. Civ. P. 15(a). Pursuant
8 to Federal Rule of Civil Procedure 15(a)(2), leave to amend should be “freely given when
9 justice so requires.” *Foman*, 371 U.S. at 182. “The power to grant leave to amend,
10 however, is entrusted to the discretion of the district court, which determines the
11 propriety of a motion to amend by ascertaining the presence of any of four factors: bad
12 faith, undue delay, prejudice to the opposing party, and/or futility.” *Serra v. Lappin*, 600
13 F.3d 1191, 1200 (9th Cir. 2010) (quotation marks and citation omitted). Generally,
14 amendments adding claims are granted more freely than amendments adding parties.
15 *Union Pacific R.R. Co. v. Nevada Power Co.*, 950 F.2d 1429, 1432 (9th Cir. 1991).

16 **III. ANALYSIS**

17 Plaintiff argues amendment is appropriate here because her brother, Kaveh
18 Hedayatzadeh, actually has a record of his parking citation, alleviating the “typicality”
19 issues that plagued Plaintiff’s Motion for Class Certification. Mot., ECF No. 30, 6. She
20 further argues her Motion to Amend (1) is made in good faith, (2) is timely following the
21 Court’s ruling on her Motion for Class Certification, (3) does not unduly prejudice
22 Defendant, and (4) would not be futile. *Id.* at 6-9. Defendant opposes, arguing that
23 Plaintiff’s “lack of standing bars amendment,” and that the four *Foman* factors described
24 above counsel against granting leave to amend. Opp’n, ECF No. 31, 4-11.

25 **A. Amendment cannot be made to cure lack of standing**

26 Plaintiff’s “typicality” argument is a guise that acknowledges her standing issues,
27 and the Court has dealt with such matters before. *See Evenchik v. Avis Rent A Car Sys.,*
28 *LLC*, No. 12-cv-0061-BEN-DHB, 2013 WL 2301224 (S.D. Cal. May 24, 2013) (denying

1 leave to amend that sought to ward off a potential challenge to the named plaintiff's
2 standing by adding another plaintiff).

3 Here, as in *Evenchik*, Plaintiff seeks to amend her Complaint "to correct the
4 shortcoming identified by adding an additional Plaintiff." Mot., ECF No. 30, 2. As in
5 *Evenchik*, the "shortcoming identified" is the named Plaintiff's standing. 2013 WL
6 2301224, at *1. The reasoning set forth in that case applies equally here:

7 The Court is mindful of the liberality of Rule 15(a), yet it does
8 not extend to cases where Plaintiff's only reason for seeking
9 amendment is to cure a standing defect. If Plaintiff *Evenchik* is
10 without standing, then amendment would not be allowed, as a
11 plaintiff "may not create jurisdiction by amendment when none
12 exists." *Lans v. Gateway 2000, Inc.*, 84 F. Supp. 2d 112, 115
13 (D.D.C. 1999) *aff'd*, 252 F.3d 1320 (Fed. Cir. 2001) (citations
14 and internal quotations omitted); *see also Almeida v. Google,*
15 *Inc.*, No. C-08-02088 RMW, 2009 WL 3809808, at *2 (N.D.
16 Cal. Nov. 13, 2009) ("[W]here the original named plaintiff lacks
17 standing, a new plaintiff with standing cannot step in to save the
18 lawsuit from dismissal."); *In re Flash Memory Antitrust Litig.*,
19 No. C 07-0086 SBA, 2010 U.S. Dist. LEXIS 66466, at *29-30
20 (N.D. Cal. Jun. 10, 2010) (a party with no standing to maintain
21 an action has no standing to amend). Plaintiff contends that the
22 amendment should be allowed because she has not admitted that
23 she lacks standing and no court has determined that she lacks
24 standing. If the amendment were for another purpose, the Court
25 might agree. Here, though, Plaintiff's only reason for seeking
26 amendment is to rectify a potential standing defect. If Plaintiff
27 has standing, as Plaintiff maintains, her justification disappears.
28 If she does not, then no amendment is permissible because a
plaintiff may not retroactively create jurisdiction. Under the
circumstances, the Court is not persuaded that amendment would
be proper. Plaintiff's motion is denied.

Id. at *2. Because Plaintiff's Motion for Leave to Amend is made solely to rectify a
potential standing defect and amendment may not be used to retroactively create
jurisdiction, the Motion is denied.

1 **B. The *Foman* factors also disfavor amendment here**

2 Even if the Court considered the *Foman* factors, the result would be the same
3 because the proposed amendment comes after unreasonable delay and would cause undue
4 prejudice to Defendant. *See* 371 U.S. at 182.

5 **1. Unreasonable Delay**

6 Defendant first argues that unreasonable delay disfavors amendment. Opp’n, ECF
7 No. 31, 7-8. Plaintiff argues her Motion closely follows the Court’s denial of her Motion
8 for Class Certification, and therefore, there is no undue delay. Mot., ECF No. 30, 7.

9 “Relevant to evaluating the delay issue is whether the moving party knew or
10 should have known the facts and theories raised by the amendment in the original
11 pleading.” *Jackson*, 902 F.2d at 1388. Though outside the class action context, the Ninth
12 Circuit has “held that an eight-month delay between the time of obtaining a relevant fact
13 and seeking a leave to amend is unreasonable.” *AmerisourceBergen Corp. v. Dialysist*
14 *West, Inc.*, 465 F.3d 946, 953 (9th Cir. 2006). Moreover, “courts have denied
15 amendment or intervention where the movant is simply seeking another chance at
16 certification.” *Ho v. Ernst & Young LLP*, Case No. C-05-04867 RMW, 2012 WL 95342,
17 at *3 (N.D. Cal. Jan. 11, 2012) (citing *Randall v. Rolls-Royce Corp.*, 637 F.3d 818, 827
18 (7th Cir. 2011) (“Intervention shouldn’t be allowed just to give class action lawyers
19 multiple bites at the certification apple, when they have chosen, as should have been
20 obvious from the start, patently inappropriate candidates to be the class
21 representatives.”)).

22 Defendant argues that Plaintiff’s standing issues were known as early as July 2019,
23 when Defendant filed its answer citing standing as an affirmative defense. Opp’n, ECF
24 No. 30, 8. By July 31, 2019, Defendant had searched its records and produced “a list of
25 all citations issued to individuals with the last name Hedayatzadeh.” *Id.* That search
26 revealed only one citation, which was given to Kaveh Hedayatzadeh in 2004 and would
27 be barred by the applicable statute of limitations. *Id.* at 8-9. Despite these early warning
28 signs about Plaintiff’s tenuous standing, Plaintiff pressed forward with her Motion for

1 Class Certification on February 27, 2020. ECF No. 19. In that filing, Plaintiff reaffirmed
2 that she had *still* been unable to locate any record of receiving a chalking citation from
3 Defendant. Pl.’s Decl., ECF. No. 19-4, at ¶ 2-3. The Court finds that the early and
4 extensive discovery conducted by Defendant in July 2019 put Plaintiff on notice of her
5 standing issues, which she chose not to address for over one year while awaiting the
6 Court’s action on her Motion for Class Certification. To be sure, nothing prevented
7 Plaintiff from seeking amendment prior to that date. Instead, this appears to be merely an
8 attempt to get “multiple bites at the certification apple.” *Randall*, 637 F.3d at 827.

9 Accordingly, Plaintiff’s delay in filing her Motion for Leave to Amend is
10 unreasonable here.

11 **2. Undue Prejudice**

12 Defendant also argues that granting the Motion would cause it undue prejudice.
13 Opp’n, ECF No. 31, 9-10. In support, Defendant argues it has conducted extensive fact
14 discovery related to Plaintiff’s claims, and that adding Kaveh Hedayatzadeh “would
15 result in [Defendant] having to respond to the amended complaint, assess the adequacy of
16 his claims and any applicable affirmative defenses, and potentially file a dispositive
17 motion with respect to his claims.” *Id.* at 10. Plaintiff

18 “The question of prejudice is closely linked with analysis on undue delay;
19 prejudice is generally found where the amendment would cause substantial delay in the
20 proceedings.” *Bookhamer v. Sunbeam Products, Inc.*, Case No. C-09-6027-EMC, 2012
21 WL 6652414, at *5 (N.D. Cal. Dec. 20, 2012). The Ninth Circuit has held that of the
22 four *Foman* factors, “it is the consideration of prejudice to the opposing party that carries
23 the greatest weight.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th
24 Cir. 2003). Undue prejudice may accrue where the defendant shows granting a motion to
25 amend “would effectively moot the Plaintiff-specific work Defendants have done.” *Hitt*
26 *v. Arizona Beverage Co., LLC*, Case No. 08-cv-809-WQH, 2009 WL 4261192, at *6
27 (Nov. 24, 2009).

28 As discussed above, the Court finds Plaintiff acted with unreasonable delay in

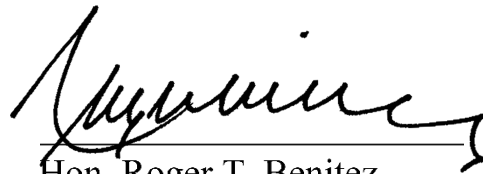
1 filing her Motion. *See, supra*, § III(B)(1). This delay occurred after Defendant located
2 and produced “the names of thousands of individuals who received such citations within
3 the applicable time frame.” Opp’n to Class Cert., ECF No. 20, 2. Defendant also
4 searched for and produced corresponding payment records for that applicable period. *Id.*
5 Fact discovery is likewise nearing completion. Scheduling Order, ECF No. 29. By
6 adding Kaveh Hedayatzadeh, the proposed substitution would amount to a new lawsuit
7 and voluminous new discovery based on a citation allegedly issued more than fifteen
8 months after the Complaint was filed. Mot., ECF No. 30, 2. *See also Gonzalez v. The*
9 *Proctor & Gamble Co.*, Case No. 06-cv-869-H, 2006 WL 8455612, at *2 (Aug. 31, 2006)
10 (denying motion to amend to substitute plaintiff where the proposed intervenor purchased
11 allegedly deficient products two years after the original plaintiff and noting that the
12 proposed intervenor was free to file her own suit). It would also “effectively moot the
13 Plaintiff-specific work Defendants have done.” *Hitt*, 2009 WL 4261192, at *6. Finally,
14 amendment would needlessly consume Defendant’s resources on procedural issues of
15 recertification while avoiding the merits of Plaintiff’s claims. *See Foman*, 371 U.S. at
16 182 (“If the underlying facts or circumstances relied upon by a plaintiff may be a proper
17 subject of relief, he ought to be afforded an opportunity to test his claim on the merits.”).
18 Accordingly, the Court finds Defendant would suffer undue prejudice from amendment.

19 **IV. CONCLUSION**

20 For the foregoing reasons, the Motion is **DENIED**. Plaintiff may pursue her claim
21 on an individual basis and the proposed intervenor may file his own lawsuit should he so
22 choose.

23 **IT IS SO ORDERED.**

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25 Dated: December 29, 2020

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Hon. Roger T. Benitez
United States District Judge