

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SMOKIAM RV RESORT LLC,

Plaintiff,

v.

WILLIAM JORDAN CAPITAL, INC., *et al.*,

Defendants.

CASE NO. C17-0885-JCC

ORDER

This matter comes before the Court on Defendants’ motion to dismiss Plaintiff’s First Amended Complaint (Dkt. No. 25). Having thoroughly considered the parties’ briefing and the relevant record, the Court finds oral argument unnecessary, hereby DENIES the motion (Dkt. No. 25) for the reasons explained herein, and DIRECTS Plaintiff to file its proposed Second Amended Complaint (Dkt. No. 27 at 24–31) within ten (10) days of this order.

**I. BACKGROUND**

The Court described the underlying facts of this case in a previous order (Dkt. No. 20) and will not repeat them here. The Court previously dismissed Plaintiff’s claims with prejudice, except for claims Plaintiff brought under the Washington Consumer Protection Act (“WCPA”), Wash. Rev. Code § 19.86. *et seq.*, which the Court dismissed without prejudice and with leave to amend. (Dkt. No. 20.) Plaintiff has since filed a First Amended Complaint (Dkt. No. 23).

1 Defendants again move to dismiss (Dkt. No. 25). Plaintiff, in opposing Defendants’ motion,  
2 includes a proposed Second Amended Complaint. (Dkt. No. 27 at 24–31.)

3 **II. DISCUSSION**

4 Defendants move to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and  
5 12(b)(6). (Dkt. No. 25.) Defendants assert the Court lacks subject matter jurisdiction over this  
6 case pursuant to 28 U.S.C. § 1332 because Plaintiff, a limited liability company (“LLC”), does  
7 not properly plead the citizenship of its member and is unable to satisfy the amount in  
8 controversy. (*Id.* at 8) Defendants further assert an LLC cannot bring a WCPA claim and even if  
9 it could, Plaintiff fails to allege sufficient facts to show the required elements of injury or  
10 causation. (*Id.* at 11.)<sup>1</sup>

11 **A. 12(b)(1) Motion**

12 A motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(1) asserting  
13 lack of subject matter jurisdiction may be a facial or factual challenge. *See White v. Lee*, 227  
14 F.3d 1214, 1242 (9th Cir. 2000). In a facial attack, the defendant asserts that the plaintiff’s  
15 allegations are insufficient on their face to confer federal jurisdiction. In reviewing such an  
16 attack, the Court assumes all material allegations in the complaint are true. *Thornhill Publ’g Co.*  
17 *v. General Tel. Elec.*, 594 F.2d 730, 733 (9th Cir. 1979). Here, Defendants facially attack  
18 Plaintiff’s First Amended Complaint, asserting that it does not identify the citizenship of  
19 Plaintiff’s members. (Dkt. No. 25 at 9–10.) Defendants are correct. A complaint containing  
20 claims by an LLC must identify the citizenship of its members in order to establish the Court’s  
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22 <sup>1</sup> Defendants also assert that Plaintiff fails to allege facts supporting the unfair or  
23 deceptive act element for a WCPA claim. (Dkt. No. 13.) But the Court already ruled on this issue  
24 when considering Defendants’ first motion to dismiss (Dkt. No. 20 at 8) and Plaintiff’s First  
25 Amended Complaint contains the same facts supporting this element as did Plaintiff’s original  
26 Complaint (*Compare* Dkt. No. 1 at 3, *with* Dkt. No. 23 at 3). The Court need not reconsider  
Defendants’ assertion, absent a demonstration of manifest error or new facts or legal authority  
which could not have been brought to the Court’s attention earlier with reasonable diligence.  
W.D. Wash. Local Civ. R. 7(h). Defendants demonstrate neither.

1 jurisdiction. W.D. Wash Local Civ. R. 8. In response, Plaintiff submits a proposed Second  
2 Amended Complaint that cures this facial deficiency. (*See* Dkt. No. 27 at 24 ¶ 1) (declaration  
3 from Bradley Ellis that he is a citizen of Washington and is the sole member of Plaintiff  
4 Smokiam RV Resort, LLC). Pursuant to Federal Rule of Civil Procedure 15(a)(2), the Court  
5 GRANTS Plaintiff leave to amend its First Amended Complaint, as proposed. Plaintiff is  
6 DIRECTED to docket the Second Amended Complaint, as proposed, within ten (10) days of this  
7 order. This amendment resolves Defendants’ first challenge.

8 Defendant also brings a factual challenge, asserting Plaintiff fails to plausibly allege that  
9 the amount in controversy exceeds \$75,000. (Dkt. No. 25 at 10.) Normally, once the moving  
10 party factually attacks a district court’s subject matter jurisdiction, the non-moving party must  
11 put forward “evidence necessary to satisfy its burden of establishing subject matter jurisdiction.”  
12 *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). But for purposes of the  
13 amount in controversy, “[t]he sum claimed by the plaintiff controls so long as the claim is made  
14 in good faith.” *Crum v. Circus Circus Enters.*, 231 F.3d 1129, 1131 (9th Cir. 2000). “To justify  
15 dismissal, it must appear to a legal certainty that the claim is really for less than the jurisdictional  
16 amount.” *Id.* (internal quotation marks and citation omitted). Defendants argue that the only  
17 damages Plaintiff plausibly asserts is \$15,000 in additional interest accrued as a result of  
18 Defendants’ alleged errors in processing Plaintiff’s payments, related attorney fees, and punitive  
19 damages. (Dkt. No. 30 at 8.) In making its argument, Defendants dismiss Plaintiff’s allegations  
20 of “substantial additional costs to obtain permanent financing” resulting from Defendants’  
21 actions, which Plaintiff asserts exceeds \$660,000. (Dkt. No. 23 at 6). Plaintiff supports its  
22 allegations with declarations from Plaintiff’s sole member and Plaintiff’s banker. (*See* Dkt. Nos.  
23 28, 29.) The Court may consider materials beyond the complaint in reviewing a factual attack on  
24 subject matter jurisdiction. *McCarthy v. U.S.*, 850 F.2d 558, 560 (9th Cir. 1988). Given  
25 Plaintiff’s assertions and related evidence, the Court concludes that it is far from a legal certainty  
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1 that the amount of Plaintiff's claim is less than \$75,000. Plaintiff sufficiently alleges an amount  
2 in controversy in excess of the jurisdictional minimum.

3 On this basis, Defendants' 12(b)(1) motion to dismiss is DENIED.

4 **B. 12(b)(6) Motion**

5 A court must dismiss an action if a plaintiff "fails to state a claim upon which relief can  
6 be granted." Fed. R. Civ. P. 12(b)(6). Under Rule 12(b)(6), the Court accepts all factual  
7 allegations in the complaint as true and construes them in the light most favorable to the  
8 nonmoving party. *Vasquez v. L.A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007). However, to  
9 survive a motion to dismiss, a plaintiff must cite facts supporting a "plausible" cause of action,  
10 consistent with Federal Rule of Civil Procedure 8(a)(2). *Bell Atlantic Corp. v. Twombly*, 550  
11 U.S. 544, 555–56 (2007). A claim has "facial plausibility" when the party seeking relief "pleads  
12 factual content that allows the Court to draw the reasonable inference that the defendant is liable  
13 for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009) (quotations omitted).  
14 Although the Court must accept as true a complaint's well-pleaded facts, "conclusory allegations  
15 of law and unwarranted inferences will not defeat an otherwise proper motion to dismiss."  
16 *Vasquez*, 487 F.3d at 1249 (quotation omitted).

17 Plaintiff alleges Defendants violated WCPA based on the manner in which they serviced  
18 Plaintiff's loan. (Dkt. No. 23 at 6–8.) A properly plead WCPA claim requires facts  
19 demonstrating the following elements: (1) an unfair or deceptive act or practice, (2) occurring in  
20 trade or commerce, (3) that impacts the public interest, (4) that causes injury to the Plaintiffs'  
21 business or property, and (5) causation. *Hangman Ridge Training Stables v. Safeco Title Ins. Co.*,  
22 719 P.2d 531, 533 (Wash. 1986). Defendants assert Plaintiff, as an LLC, lacks standing to bring  
23 a WCPA claim. (Dkt. No. 25 at 12–15.) Moreover, Defendants assert that even if an LLC has  
24 standing, Plaintiff failed to adequately plead the fourth and fifth elements for a WCPA claim:  
25 injury and causation.<sup>2</sup> (*Id.*)

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26 <sup>2</sup> See *supra* note 1.

1 Defendants' standing argument is based on an unnecessarily narrow reading of the  
2 statute. According to Revised Code of Washington § 19.86.090, an injured "person" meeting the  
3 requirements of WCPA can bring a claim for recovery. For WCPA purposes, "person" is defined  
4 as "natural persons, corporations, trusts, unincorporated associations and partnerships." Wash.  
5 Rev. Code § 19.86.010. Defendants point out that LLCs are noticeably absent from this list. But  
6 that is because the list was promulgated in 1961, well before LLCs were established in  
7 Washington. *See* WASHINGTON LAWS OF 1961, ch. 216, § 1 (defining "person" for purposes of an  
8 LLC); WASHINGTON LAWS OF 1994, ch. 211 § 101 *et seq.* (establishing limited liability  
9 companies in Washington). It seems that Washington's legislature simply failed to update the  
10 language of § 19.86.010 when it established LLCs. Regardless, Revised Code of Washington  
11 § 1.16.080 provides that a "person, firm, or corporation" as used elsewhere in the Code includes  
12 a "limited liability company." *See State v. Jeffries*, 709 P.2d 819, 821 (Wash. App. 1985) ("RCW  
13 1.16.080 defines 'person' for purposes of the entire code."). Plaintiff, as an LLC, has standing to  
14 bring a WCPA claim.

15 Plaintiff asserts that it was unable to refinance the short-term financing serviced by  
16 Defendants with permanent financing through Old West Federal Credit Union at a lower interest  
17 rate because of Defendants' actions. (Dkt. No. 23 at 5–6.) As a result, Plaintiff alleges that it has  
18 been unable to complete the purchase of cabin units for which it had made down payments,  
19 resulting in lost down payments and lost rental revenue. (*Id.* at 6.) Defendants counter these  
20 allegations are insufficient to satisfy demonstrate injury and causation under WCPA. (Dkt. No.  
21 25 at 14–15.)

22 Defendants base their injury argument on the fact that Plaintiff is not a "person" and only  
23 "persons" may assert an injury in a WCPA claim. (*Id.*) (citing Wash. Rev. Code. § 19.86.090).  
24 But, as discussed above, Plaintiff is a "person" for purposes of its WCPA claim. As to causation,  
25 Defendants do not directly allege that Plaintiff fails to plead sufficient facts to establish a causal  
26 link between the unfair or deceptive practice allegedly engaged in by Defendants. (*See generally*

1 Dkt. No. 25 at 15.) Instead, Defendants assert the following counterfactuals: (1) Plaintiff's own  
2 actions led to its injuries, (2) Plaintiff failed to mitigate, and (3) an intervening action by a third  
3 party caused Plaintiff's injuries. (*Id.*) Such assertions are not appropriate for the Court to  
4 consider in a 12(b)(6) motion, where the focus is on the sufficiency of Plaintiff's allegation—not  
5 Defendants' defenses. *See Vasquez*, 487 F.3d at 1249 (the Court accepts a plaintiff's factual  
6 allegations contained in the complaint as true and construes them in the light most favorable to  
7 Plaintiff). Plaintiff states a valid WCPA claim.

8 For these reasons, Defendants' 12(b)(6) motion to dismiss is DENIED.

9 **III. CONCLUSION**

10 Defendants' motion to dismiss (Dkt. No. 25) is DENIED. The Court GRANTS Plaintiff  
11 leave to amend its First Amended Complaint, as proposed (Dkt. No. 27 at 24–31) and DIRECTS  
12 Plaintiff to file its proposed Second Amended Complaint within ten (10) days of this order.

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14 DATED this 27th day of December 2017.

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20 John C. Coughenour  
21 UNITED STATES DISTRICT JUDGE  
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