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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ADAMA JAMMEH, et al.,

11 Plaintiffs,

12 v.

13 HNN ASSOCIATES, LLC, et al.,

14 Defendants.

CASE NO. C19-0620JLR

ORDER GRANTING
PLAINTIFFS' UNOPPOSED
MOTION FOR LEAVE TO FILE
A SECOND AMENDED CLASS
ACTION COMPLAINT

15 **I. INTRODUCTION**

16 Before the court is Plaintiffs Adama Jammeh and Oumie Sallah's (collectively,
17 "Plaintiffs") motion for leave to file a second amended class action complaint, which
18 seeks to (1) add William Wojdak—the allegedly controlling principle of Defendant
19 Columbia Debt Recovery, LLC, d/b/a Genesis ("Columbia")—as a defendant, (2) add a
20 claim under the Washington Landlord Tenant Act, RCW ch. 59.18, and (3) bring class
21 allegations on behalf of two classes of Washington residents who were former tenants of
22 apartments managed by Defendant HNN Associates, LLC ("HNN") and who paid

1 various move-out charges to HNN or its collection agency Columbia. (*See* Mot. (Dkt.
2 # 12); *see also* Praecipe (Dkt. # 15) (attaching corrected Ex. B to Mot.)) Defendants
3 HNN, Gateway, LLC (“Gateway”), and Columbia (collectively, “Defendants”) failed to
4 timely file an opposition to Plaintiffs’ motion. (*See generally* Dkt.) The court has
5 considered the motion, the submissions filed in support of the motion, the relevant
6 portions of the record, and the applicable law. Being fully advised,¹ the court GRANTS
7 Plaintiffs’ motion for leave to file a second amended class action complaint. The court
8 ORDERS Plaintiffs to file their proposed second amended complaint (*see* Mot., Ex. A)
9 within seven (7) days of the filing date of this order. The court also DIRECTS the Clerk
10 to file a schedule for the motion for class certification.

11 II. BACKGROUND

12 Plaintiffs are sisters who co-signed a lease on rental property in which Ms.
13 Jammeh lived with her children. (FAC (Dkt. # 1-5) ¶¶ 4.10-4.12.) Gateway owned the
14 property, and HNN managed it. (*Id.* ¶¶ 3.2-3.3.) Approximately four months into the
15 lease, HNN and Gateway evicted Plaintiffs for reasons Plaintiffs allege are pretextual and
16 immaterial. (*See id.* ¶¶ 4.23-4.33.) HNN and Gateway then allegedly declared Plaintiffs’
17 security deposit forfeited and claimed additional fees, which Plaintiffs dispute. (*See id.*
18 ¶¶ 4.34-4.61.) HNN then referred Plaintiffs’ account to Columbia for collections. (*See*
19 *id.* ¶¶ 4.62-4.71.) Plaintiffs assert that Mr. Wojdak controls Columbia. (Mot. at 1.)

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21 ¹ Plaintiffs did not request oral argument (*see* Mot.), and the court does not consider oral
22 argument to be helpful to its disposition of this unopposed motion, *see* Local Rules W.D. Wash.
LCR 7(b)(4).

1 Plaintiffs filed their complaint in King County Superior Court on March 7, 2019,
2 and filed a first amended complaint on April 25, 2019, which added a claim under the
3 Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1962, *et seq.* (*See* Compl.
4 (Dkt. # 1-1); FAC (Dkt. # 3 at 51-71).) On April 26, 2019, Defendants removed the
5 action to federal court on the basis of 28 U.S.C. §§ 1331 and 1441(c). (Not. of Removal
6 (Dkt. # 1).) Plaintiffs did not oppose removal. (*See generally* Dkt.)

7 On June 14, 2019, the court issued a scheduling order setting July 12, 2019, as the
8 deadline for joining additional parties, and April 16, 2020, as the deadline for amending
9 pleadings. (Sched. Order (Dkt. # 9) at 1.) Thus, Plaintiffs’ July 12, 2019, motion seeking
10 to add a defendant and amend the allegations of their first amended complaint is timely.
11 (*See id.*; *see also* Mot.) As of the date Plaintiffs filed their motion, no party has taken any
12 depositions or engaged in formal written discovery beyond providing the required initial
13 disclosures under Federal Rule of Civil Procedure 26(a). (Leonard Decl. (Dkt. # 13) ¶ 2.)

14 Nevertheless, Plaintiffs assert that the documents HNN produced in informal
15 discovery on May 10, 2019, “reveal[] specific ways that HNN and Gateway . . . engaged
16 in practices that violate[] the Residential Landlord Tenant Act[, RCW ch. 59.18,] along
17 with the Washington Consumer Protection Act [(“CPA”), RCW ch. 19.86].” (Mot. at 2
18 (citing Leonard Decl. ¶¶ 3-5).) Plaintiffs also assert that these documents and further
19 investigation revealed the basis for class action allegations on behalf of two classes of
20 Washington residents. The two proposed classes are based on (1) the conduct of HNN
21 and Gateway, and (2) Columbia’s debt collection practices. (*Id.* at 2-3.) Finally,
22 Plaintiffs assert that initial disclosures and independent investigation reveal the basis for

1 individual allegations against Mr. Wojdak based on his control of the conduct and
2 practices of Columbia. (*Id.* at 3-4 (citing Leonard Decl. ¶¶ 6-14, Exs. B-I).)

3 III. ANALYSIS

4 A. Standard of Review

5 A party may amend its complaint with leave of court, and “[t]he court should
6 freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). “[T]his policy is to
7 be applied with extreme liberality.” *Desertrain v. City of L.A.*, 754 F.3d 1147, 1154 (9th
8 Cir. 2014) (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th
9 Cir. 1990)). Under Rule 15(a), courts consider various factors, including: (1) bad faith;
10 (2) undue delay; (3) prejudice to the opposing party; (4) futility of the amendment; and
11 (5) whether the plaintiff has previously amended the complaint. *Eminence Capital, LLC*
12 *v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (per curiam). These factors do not
13 carry equal weight, however, and prejudice is the touchstone of the analysis. *See id.* It is
14 also proper for courts to deny leave to amend if the amendment would be futile or the
15 amended complaint would be dismissed. *Platt Elec. Supply, Inc. v. EOFF Elec., Inc.*,
16 522 F.3d 1049, 1060 (9th Cir. 2008). The party opposing the amendment bears the
17 burden of showing why leave to amend should be denied. *See, e.g., Desert Protective*
18 *Council v. U.S. Dept. of the Interior*, 927 F. Supp. 2d 949, 962 (S.D. Cal. 2013).

19 B. No Delay

20 “In evaluating whether there has been undue delay, the Court must consider
21 ‘whether the moving party knew or should have known the facts and theories raised by
22 the amendment’ at an earlier time.” *Dunbar v. Google, Inc.*, No. 5:12-cv-003305-LHK,

1 2012 WL 6202797, at *12 (N.D. Cal. Dec. 12, 2012). As discussed above, Plaintiffs only
2 recently learned of the bases for their proposed amendments. (*See* Leonard Decl.
3 ¶¶ 3-14, Exs. B-I.) Further, Plaintiffs’ motion is timely under the scheduling order. (*See*
4 Sched. Order at 1 (setting July 12, 2019, as the deadline for joining additional parties, and
5 April 16, 2020, as the deadline for amending pleadings).) The court concludes that this
6 factor favors permitting the proposed amendments.

7 **C. No Bad Faith**

8 Bad faith occurs when “the plaintiff merely is seeking to prolong the litigation by
9 adding new but baseless legal theories.” *Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877,
10 881 (9th Cir. 1999). The operative facts that form the basis of Plaintiffs’ claims remain
11 substantially the same. Plaintiffs seek to add only (1) a legal claim based on the
12 Residential Landlord Tenant Act, RCW ch. 59.18, (2) an individual defendant who is the
13 chief executive officer of and allegedly controls the conduct and policies of one of the
14 business defendants, and (3) class allegations for two classes of former tenants. The
15 court can detect no bad faith. This factor weighs in favor of permitting the proposed
16 amendments.

17 **D. No Undue Prejudice**

18 Plaintiffs’ proposed amendment cause no undue prejudice to Defendants. This
19 case is in its earliest stages. Discovery is just beginning, and at the time the motion was
20 filed, no party had propounded written discovery requests or taken any depositions.
21 (Leonard Decl. ¶ 2.) Discovery will not close until June 15, 2020. (Sched. Order at 1.)
22 As a result, Plaintiffs’ proposed amendments should not cause unwarranted delays in the

1 case schedule. Further, because the case is in its earliest stages, the court can conceive of
2 no undue prejudice to Mr. Wojdak by adding him as a defendant now. Indeed, courts
3 have permitted similar amendments at much later litigation stages. *See, e.g., Dunbar,*
4 2012 WL 6202797, at *16 (permitting an amendment of the class definition in part
5 because the defendant would not suffer undue prejudice even though class discovery had
6 closed in part because merits discovery remained open). Finally, Defendants' lack of
7 response confirms the court's conclusion that they will suffer no prejudice by permitting
8 the proposed amendments. *See* Local Rules W.D. Wash. LCR 7(b)(2) (“[I]f a party fails
9 to file papers in opposition to a motion, such failure may be considered by the court as an
10 admission that the motion has merit.”). This factor weighs in favor of permitting the
11 amendments.

12 **E. No Futility**

13 A proposed amendment is futile only if the amended complaint would be subject
14 to dismissal under Federal Rule of Civil Procedure 12(b)(6). *See, e.g., Abels v. JBC*
15 *Legal Grp., P.C.*, 229 F.R.D. 152, 157 (N.D. Cal. 2005) (granting leave to amend to add a
16 defendant to a proposed class action under the FDCPA). The court perceives no basis for
17 dismissal of the proposed class allegations or the Residential Landlord Tenant Act, RCW
18 ch. 59.18, claim on grounds of inadequate pleading. Defendants' failure to file a
19 response to Plaintiffs' motion supports this conclusion. *See* Local Rules W.D. Wash.
20 LCR 7(b)(2).

21 With respect to Mr. Wojdak, a corporate officer may be personally liable under
22 both the FDCPA, 15 U.S.C. § 1692, *et seq.*, and the CPA, RCW ch. 19.86. Under the

1 FDCPA, a debt collector includes any individual who “regularly collects or attempts to
2 collect, directly or indirectly, debts owed or due or asserted to be due another.” 15
3 U.S.C. § 1692a(6); *Cruz v. Int’l Collection Corp.*, 673 F.3d 991, 999 (9th Cir. 2012). In
4 making this determination, courts consider whether the individual “(1) materially
5 participated in collecting the debts at issue; (2) exercised control over the affairs of the
6 business; (3) [was] personally involved in the collection of the debt at issue; or (4) [was]
7 regularly engaged, directly or indirectly, in the collection of debts.” *Smith v. Levine*
8 *Leichtman Capital Partners, Inc.*, 723 F. Supp. 2d 1205, 1214 (N.D. Cal. 2010) (citing
9 *Schwarm v. Craighead*, 552 F. Supp. 2d 1056, 1073 (E.D. Cal. 2008)). Under the CPA, it
10 is well-settled that “[i]f a corporate officer participates in the wrongful conduct, or with
11 knowledge approves of the conduct, then the officer, as well as the corporation, is liable
12 for the penalties.” *State v. Ralph Williams’ N. W. Chrysler Plymouth, Inc.*, 553 P.2d 423,
13 439 (Wash. 1976). Here, Plaintiffs allege in their proposed amended complaint that Mr.
14 Wojdak exercises control over Columbia, and has implemented, adopted, and ratified the
15 collection practices at issue. (*See* Prop. 2d Am. Compl. (Dkt. # 15-1) ¶¶ 1.4, 3.7,
16 4.42-4.43, 5.4(j), 6.29.) The court concludes that this factor weighs in favor of permitting
17 the amendments.

18 **F. Previous Amendments**

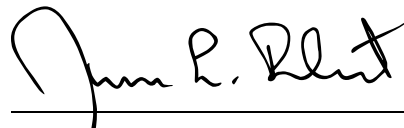
19 “The district court’s discretion to deny leave to amend is particularly broad where
20 plaintiff has previously amended the complaint.” *See Allen v. City of Beverly Hills*, 911
21 F.2d 367, 373 (9th Cir. 1990) (quoting *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d
22 1149, 1160 (9th Cir. 1989)). This is not a situation, however, where a plaintiff repeatedly

1 tries and fails to cure pleading deficiencies. Instead, the allegations Plaintiffs propose are
2 new allegations based on Defendants' initial disclosures and resulting investigation. *See,*
3 *e.g., United States v. United Healthcare Ins. Co.,* 848 F.3d 1161, 1183 (9th Cir. 2016)
4 (granting the plaintiff an additional opportunity to amend the complaint, despite three
5 prior amended complaints, because the plaintiff pleaded new legal theories not previously
6 challenged). Thus, Plaintiffs' prior amended complaints do not weigh against permitting
7 the amendment here.

8 IV. CONCLUSION

9 Because the court freely gives leave to amend when justice so requires, and the
10 relevant factors favor permitting the requested amendments, the court GRANTS
11 Plaintiffs' motion for leave to file a second amended class action complaint (Dkt. # 12).
12 The court ORDERS Plaintiffs to file their second amended complaint within seven (7)
13 days of the filing date of this order. The court also DIRECTS the Clerk to file a schedule
14 for the motion for class certification.

15 Dated this 15th day of October, 2019.

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18 JAMES L. ROBART
19 United States District Judge
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