

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BRIAN C. WILLIAMS, MARICOL)
YUNAIRA TINEO DE LEON, JAIRO)
VENSRIQUE LEON DA COSTA, and)
others similarly situated,)

Plaintiffs,)

v.)

1:19-CV-1076

THE ESTATES LLC, THE ESTATES)
REAL ESTATE GROUP, LLC,)
TIMBRA OF NORTH CAROLINA,)
LLC, VERSA PROPERTIESM LLC,)
RED TREE HOLDINGS, LLC,)
MALDIVES, LLC, CAROLYN)
SOUTHER, and DOES 1-100,)

Defendants.)

ORDER

The plaintiffs move to file an amended complaint, adding specific allegations about the corporate structure of The Estates defendants and adding many now-identified defendants, mentioned in the original complaint as unnamed “Does.” The proposed complaint also adds a new representative plaintiff for the putative class. Ordinarily, motions to amend at this stage should be freely granted. Fed.R.Civ.P. 15(a)(2).

The defendants first object to the motion on grounds of prejudice and bad faith. *See Labor v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006). The assertions of prejudice, which only concern the time and cost of litigation and are unrelated to the allegations in the proposed amended complaint, are conclusory and hyperbolic. Doc. 96 at 17–18. The defendants have not offered any evidence to support their claim that the plaintiffs acted in

bad faith by seeking to update the complaint with information previously in the sole possession of the defendants. *See* Doc. 85 at ¶¶ 1–4.

Next, the defendants contend that the claims presented in the proposed amended complaint are futile. Doc. 96 at 19–30. “A proposed amendment is futile when it is clearly insufficient or frivolous on its face . . . [or] if the claim it presents would not survive a motion to dismiss.” *Save Our Sound OBX, Inc. v. N.C. Dep’t of Trans.*, 914 F.3d 213, 228 (4th Cir. 2019). The proposed complaint alleges the same claims arising out of the same operative facts as the original complaint, *compare* Doc. 1 at ¶¶ 107–25, *with* Doc. 85-1 at ¶¶ 103–22, which has already survived a motion to dismiss. Doc. 48. The defendants make no argument specific to any of the newly named defendants; they merely repeat the arguments of estoppel, jurisdiction, and sufficiency that this Court has previously rejected. *See id.*

The defendants’ contention that the newly named plaintiff, Mike Gustafson, Doc. 85-1 at ¶ 9, is an inadequate class representative is not a basis to deny a motion to amend. If he is an inadequate class representative, that can be addressed in connection with the pending renewed motion for class certification. *See* Doc. 86.

Finally, the defendants do not dispute that each of the newly named LLC defendants are owned or operated by previously named defendants with notice of this action. *See* Doc. 85 at ¶ 9; Doc. 99 at 4–5. The Court encourages the parties to manage service of process in a prompt and efficient manner and reminds the new defendants of the penalties for failing to waive service without good cause. *See* Fed. R. Civ. P. 4(d)(2).

It is **ORDERED** that the motion to amend the complaint, Doc. 85, is **GRANTED**, and the plaintiffs shall file the proposed amended complaint attached to their motion within five days. The new defendants shall have fourteen days from service to file an answer to the amended complaint.

It is further **ORDERED** that counsel shall confer to determine what effect this has on the pending motion for class certification and whether short supplemental briefing is needed, and they shall file a joint status report no later than December 30, 2020.

This the 9th day of December, 2020.


UNITED STATES DISTRICT JUDGE