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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SOUROVELIS, et al.,	:	CIVIL ACTION
	:	No. 14-4687
Plaintiffs,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.,	:	
	:	
Defendants.	:	

FILED
 SEP 15 2016
 LUCY V. CHIN, Interim Clerk
 BY [Signature] Dep. Clerk

O R D E R

AND NOW, this **14th** day of **September, 2016**, upon consideration of Plaintiffs' "Motion to Join Defendant State Court Administrators, File a Second Amended Complaint, and Sever Plaintiffs' Fifth Claim for Relief"¹ (ECF No. 139), and the responses, reply and sur-reply thereto (ECF Nos. 142, 143, 144-1, and 145-1) and having found that:

1. Fed R. Civ. P. 20 governing permissive joinder of defendants is satisfied regarding joining the state court administrators because the claims against them arise out of the same series of occurrences and share common issues of fact and

¹ In their motion, Plaintiffs seek to file a Second Amended Complaint which alters the Amended Complaint in three ways. Specifically, they seek to: (1) add as Defendants to Claims Three, Four, and Six the following four state court administrators in their official capacities: President Judge Sheila A. Woods-Skipper, Administrative Judge F. Jacqueline Allen, Court Administrator Joseph H. Evers, and Chief Deputy Court Administrator Charles A. Mapp; (2) add additional factual averments which arose after the Amended Complaint was filed; and (3) add a Seventh Claim. Plaintiffs also seek to sever Claim Five under Fed. R. Civ. P. 21. The only part of the motion opposed by Defendants is the addition of the new Claim Seven.

law as those against the other Defendants. Fed. R. Civ. P. 20(a)(2). Moreover, there is no evidence that joining these defendants would be prejudicial or futile;²

2. Plaintiffs have not unduly delayed in seeking to add Claim Seven nor will its inclusion in this case substantially prejudice Defendants;³ and

² See Foman v. Davis, 371 U.S. 178, 182 (1962) (providing that "[i]n the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the leave sought should, as the rules require, be 'freely given'" (quoting Fed. R. Civ. P. 15(a))).

³ The proposed Claim Seven "broadly challenges the constitutionality of the way forfeiture proceedings have been conducted, including failing to provide property owners with adequate notice and supplanting civil rules and procedures with criminal procedures." Pl. Mot. ECF No. 139-1 at 18. Defendants contend that Plaintiffs unduly delayed in seeking to add Claim Seven and that its inclusion would substantially prejudice them.

Leave to amend a pleading under Fed. R. Civ. P. 15(a) should be freely given unless the amendment, inter alia, was unduly delayed or would create substantial prejudice. Foman, 371 U.S. at 182. The decision to give leave to amend is left to the discretion of the trial court. Heyl & Patterson Int'l, Inc. v. F. D. Rich Hous. of Virgin Islands, Inc., 663 F.2d 419, 425 (3d Cir. 1981). Defendants bear the burden of establishing that leave to amend should be denied. Id. at 426.

The Court finds that Plaintiffs did not unduly delay in raising Claim Seven. This claim concerns ongoing practices of which Plaintiffs learned after they filed their Amended Complaint. Plaintiffs delayed in seeking leave to add this claim until after the completion of related but ultimately unsuccessful settlement negotiations. The Court concludes that

3. Severing Claim Five pursuant to Fed. R. Civ. P. 21 will promote judicial economy and party convenience as it involves separate facts and parties from the remaining claims and is already on a separate scheduling order with discovery underway. The Defendants do not contend that they will face any prejudice if the claim is severed, while Plaintiffs could be prejudiced if the claim is not severed because its resolution would be greatly delayed;⁴

delaying the filing of a Second Amended Complaint while the parties negotiated in good faith does not amount to undue delay.

The Court further finds that the inclusion of Claim Seven will not substantially prejudice Defendants. "[U]ndue prejudice is the touchstone for the denial of leave to amend." Id. at 425 (internal quotation marks omitted). A defendant must do more than merely claim prejudice and instead "must show that it was unfairly disadvantaged or deprived of the opportunity to present facts or evidence which it would have offered had the [plaintiff's] amendments been timely." Id. at 426. The parties have not briefed summary judgment motions at this point and Claim Seven is related to the other claims such that the Court does not foresee untoward amounts of additional discovery. Defendants will not be unfairly disadvantaged or deprived of offering facts or evidence because of the addition of Claim Seven.

⁴ See Official Comm. of Unsecured Creditors v. Shapiro, 190 F.R.D. 352, 355 (E.D. Pa. 2000) (providing that "[w]hether severance [of a claim] is warranted requires balancing of several considerations, including 'the convenience of the parties, avoidance of prejudice to either party, and promotion of the expeditious resolution of the litigation.' Specific factors are '(1) whether the issues sought to be tried separately are significantly different from one another, (2) whether the separable issues require the testimony of different witnesses and different documentary proof, (3) whether the party

it is hereby **ORDERED** that:

4. Plaintiffs' Motion for Leave to File a Reply (ECF NO. 144) is **GRANTED** and the reply, docketed at ECF No. 144-1 is deemed filed as of August 18, 2016;

5. Defendants' Motion to Submit a Surreply (ECF No. 145) is **GRANTED** and the surreply, docketed at ECF No. 145-1 is deemed filed as of August 19, 2016; and

6. Plaintiff's Motion to Join Defendant State Court Administrators, File a Second Amended Complaint, and Sever Plaintiffs' Fifth Claim for Relief (ECF No. 139) is **GRANTED**.

It is hereby further **ORDERED** that:

7. President Judge Sheila A. Woods-Skipper, Administrative Judge Jacqueline F. Allen, Joseph H. Evers, and Charles A. Mapp, are joined as Defendants pursuant to Fed. R. Civ. P. 20(a)(2) in their official capacities as state court administrators to Plaintiffs' Third, Fourth, and Sixth Claims for Relief;

opposing the severance will be prejudiced if it is granted, and (4) whether the party requesting the severance will be prejudiced if it is not granted'" (quoting German v. Federal Home Loan Mortgage Corp., 896 F. Supp. 1385, 1400 (2d Cir. 1995)) (internal citations omitted).

8. Plaintiffs' Second Amended Complaint, docketed at ECF No. 139-2, is deemed filed as of this date pursuant to Fed. R. Civ. P. 15(a)(2) and (d); and

9. Plaintiffs' Fifth Claim for Relief is **SEVERED** pursuant to Fed. R. Civ. P. 21 and, in so doing, retains the deadlines it set in its Scheduling Order dated June 2, 2016. (ECF No. 129.)

IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

ENTERED
SEP 15 2016
CLERK OF COURT