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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
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7 MANUEL A. JUDAN, et al.,  
8 Plaintiffs,

9 v.

10 WELLS FARGO BANK, NATIONAL  
11 ASSOCIATION, AS LENDER, et al.,  
12 Defendants.

Case No. 15-cv-05029-HSG

**ORDER GRANTING LEAVE TO FILE  
AMENDED COMPLAINT**

Re: Dkt. Nos. 9, 25

13 Pending before the Court is Plaintiffs' motion for leave to file an amended complaint. The  
14 Court finds the matter suitable for disposition without oral argument, see Civ. L.R. 7-1(b), and  
15 GRANTS Plaintiffs' motion.

16 **I. BACKGROUND**

17 On September 30, 2015, Plaintiffs Manuel Judan and Marylyn Callejo-Judan filed the  
18 instant action pro se in state court, and on November 2, 2015, the Defendants removed to the  
19 Northern District of California and filed a motion to dismiss. Dkt. Nos. 1, 9. On January 19,  
20 2016, the Court took Defendants' motion to dismiss under submission. Dkt. No. 19. On July 14,  
21 2016, Plaintiffs retained Mellen Law Firm, and the firm filed a notice of appearance in place of  
22 Plaintiffs pro per on July 19, 2016. Dkt. No. 25-2, ¶ 2. On August 18, 2016, Plaintiffs through  
23 their newly-acquired counsel filed a motion for leave to file an amended complaint. Dkt. No. 25.

24 **II. LEGAL STANDARD**

25 Rule 15 of the Federal Rules of Civil Procedure provides that "a party may amend its  
26 pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15.  
27 Granting or denying leave to amend a complaint is in the Court's discretion, Cal. v. Neville Chem.  
28 Co., 358 F.3d 661, 673 (9th Cir. 2004). "In exercising this discretion, a court must be guided by

1 the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the pleadings  
2 or technicalities.” *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). “Rule 15 advises the  
3 court that ‘leave shall be freely given when justice so requires.’” *Eminence Capital, LLC v.*  
4 *Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (per curiam). “This policy is to be applied with  
5 extreme liberality.” *Id.* (internal quotation marks omitted).

6 When considering whether to grant leave, courts examine these factors: “(1) bad faith, (2)  
7 undue delay, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether  
8 plaintiff has previously amended his complaint.” *Sisseton-Wahpeton Sioux Tribe v. United States*,  
9 90 F.3d 351, 355-56 (9th Cir. 1996) (per curiam).

### 10 III. DISCUSSION

11 Since filing the complaint and opposing the motion to dismiss, Plaintiffs have obtained  
12 counsel. The proposed amended complaint sets forth proper causes of action and more clearly  
13 identifies the allegations against Defendants. Because the initial complaint was filed pro se and  
14 because the policy of favoring amendments under Rule 15(a) “is applied even more liberally to  
15 pro se litigants” than to parties represented by counsel, *Eldridge v. Block*, 832 F.2d 1132, 1135  
16 (9th Cir. 1987), the Court finds that the interests of justice weigh in favor of granting leave to  
17 amend. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (holding that pro se pleadings are held  
18 “to less stringent standards than formal pleadings drafted by lawyers”).

19 There is no evidence of bad faith or undue delay. In fact, since becoming counsel a month  
20 ago, counsel from Mellen Law Firm has acted diligently and expeditiously. Counsel has reviewed  
21 the case, communicated with opposing counsel, and attempted to address deficiencies in the  
22 original complaint. Counsel indicates that “[u]pon receipt and review of the case and file  
23 documents, the Mellen Law Firm recognized that the Complaint is deficient and does not set forth  
24 proper causes of action,” and the firm began drafting a first amended complaint and the instant  
25 motion. Dkt. No. 25-2, ¶¶ 3-4. On August 12 and 15, counsel emailed opposing counsel a draft of  
26 the amended complaint, seeking Defendants’ stipulation in the filing of the new complaint. These  
27 actions evidence both diligence and good faith.

28 Moreover, the Court finds that any prejudice to Defendants is minimal. Although the

1 complaint alleges new causes of action, the allegations arise from the same facts alleged in the  
2 original complaint: the 2003 purchase of property in Pacifica, California and Plaintiffs' financing  
3 of the property. Given the early stage of litigation, the absence of a case schedule, and the fact  
4 that a first amended complaint drafted by Plaintiffs' newly-obtained counsel would further  
5 Defendants' (and the Court's) understanding of the case, the Court finds that any prejudice is not  
6 sufficient to deny Plaintiffs leave to amend. In addition, even were the Court to consider the  
7 currently-pending motion to dismiss on the merits, Ninth Circuit authority makes clear that leave  
8 to amend generally should be granted in most circumstances in any event. See *Lopez v. Smith*, 203  
9 F.3d 1122, 1130 (9th Cir. 2000).


10 Finally, Plaintiffs have not previously amended the complaint, and the Court concludes  
11 that amendment would not be futile in this case.

12 **IV. CONCLUSION**

13 For these reasons, Plaintiffs' motion for leave to file a first amended complaint is  
14 GRANTED. The Court directs Plaintiffs to file a first amended complaint by August 23, 2016.  
15 The pending motion to dismiss, Dkt. No. 9, is DENIED as moot.

16 **IT IS SO ORDERED.**

17 Dated: 8/19/2016

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20 HAYWOOD S. GILLIAM, JR.  
21 United States District Judge  
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