

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ALPHONSO RICHARDSON, SR. and  
RUTH A. RICHARDSON,

Plaintiffs,

vs.

CHARLES O. ROBISON, individually  
and as Trustee of The Robison Family  
Trust dated 04/05/2001; BLANCHE L.  
ROBISON, individually and as Trustee of  
The Robison Family Trust dated  
04/05/2001; RICHARD CHEROSKE,  
individually and as assignee of The  
Robison Family Trust; ERIC A. KLEIN,  
individually; ROBERT H. LAYTON,  
individually; ALPHONSO  
RICHARDSON, JR., individually;  
STATEWIDE RECONVEYANCE, INC.  
dba STATEWIDE FORECLOSURE  
SERVICES, a California corporation;  
COMMONWEALTH LAND TITLE  
COMPANY, a California corporation;  
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 08CV902-WQH-BLM  
ORDER

HAYES, Judge:

The matter before the Court is the motion for leave to amend the complaint (Doc. 50) filed by Plaintiffs Alphonso Richardson and Ruth Richardson.

On May 21, 2008, Plaintiffs filed a complaint against Defendants Charles O. Robison, Blanche L. Robison, Richard Cheroske, Eric A. Klein, Robert H. Layton, Alphonso Richardson Jr., Statewide Reconveyance, Inc., and Commonwealth Land Title Company.

1 (Doc. 1.) The complaint alleges causes of action for: (1) violations of the Truth in Lending Act  
2 (TILA); (2) violations of California’s Predatory Lender Law; (3) violations of California’s  
3 Real Estate Licensing Regulations; (4) breach of fiduciary duty; (5) constructive fraud; (6)  
4 negligence; (7) violations of California’s Fair Debt Collection Practices Act; (8) declaratory  
5 relief; and (9) injunctive relief.

6 On June 3, 2008, Plaintiffs filed an application for temporary restraining order to enjoin  
7 Defendants from proceeding with a foreclosure sale on their home. (Doc. 3) On June 5, 2008,  
8 this Court denied Plaintiffs’ application for a temporary restraining order. (Doc. 7.) Plaintiffs’  
9 home was sold at the non-judicial foreclosure sale to Defendants Charles O. Robison, Blanche  
10 L. Robison, and Richard Cheroske (the Lender Defendants) on June 5, 2008. On June 18,  
11 2008, the Lender Defendants filed a counterclaim against Plaintiffs for fraud and unjust  
12 enrichment. (Doc. 11.) On September 19, 2008, Defendants Statewide and Commonwealth  
13 were dismissed from this action pursuant to the parties’ joint motion. (Docs. 35, 36.)

14 On July 8, 2008, the Plaintiffs filed a lis pendens at the San Diego Recordors’ Office.  
15 On August 7, 2008, the Lender Defendants filed a motion to expunge the lis pendens. (Doc.  
16 27.) On December 12, 2008, this Court issued an order granting the motion to expunge lis  
17 pendens. (Doc. 47.)

18 On January 5, 2009, Plaintiffs filed a motion for leave to file a first amended complaint.  
19 (Doc. 50.) On January 26, 2009, the Lender Defendants filed a response to the motion to  
20 amend. (Doc. 51.) On January 27, 2009, Defendants Eric Klein and Robert Layton (the  
21 Broker Defendants) filed a response in opposition to the motion to amend. (Doc. 54.)

## 22 DISCUSSION

23 Plaintiffs seek leave to file a first amended complaint “in order to conform the pleading  
24 to facts that have developed in this case and to update the status of the case.” (Doc. 50 at 1.)  
25 The proposed amended complaint sets forth an alternative basis regarding Defendants’ alleged  
26 non-compliance with the TILA “notice to cancel” provision at 15 U.S.C. § 1635(a). (Doc. 50  
27 at 3.) The Lender Defendants do not oppose the motion “because of the liberal grounds on  
28 which leave to amend pleadings is to be allowed, and for the sake of judicial economy and

1 efficiency.” (Doc. 51 at 2.) The Broker Defendants oppose the motion, asserting that they will  
2 be unduly prejudiced if amendment is allowed and that amendment is sought “in a dilatory  
3 manner.” (Doc. 54.)

4 Rule 15 of the Federal Rules of Civil Procedure mandates that leave to amend “be freely  
5 given when justice so requires.” Fed. R. Civ. P. 15(a). This policy is applied with  
6 “extraordinary liberality.” *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079  
7 (9th Cir. 1990). Once an answer to the complaint has been filed, “leave to amend should be  
8 granted unless amendment would cause prejudice to the opposing party, is sought in bad faith,  
9 is futile, or creates undue delay.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607  
10 (9th Cir. 1992). “[T]here exists a presumption under Rule 15(a) in favor of granting leave to  
11 amend.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

12 In this case, the Broker Defendants have not overcome the presumption in favor of  
13 granting motions for leave to amend. The Magistrate Judge issued a scheduling order  
14 requiring any motion to amend the complaint be filed on or before January 5, 2009. (Doc. 45.)  
15 Plaintiffs’ motion was timely filed on January 5, 2009. (Doc. 50.) The discovery cutoff date  
16 is July 3, 2009 and the final pre-trial conference is scheduled to take place on January 4, 2010.  
17 The Court does not find that the proposed amendments would be futile based on the pleadings  
18 or that Plaintiff is proceeding in bad faith. The Court concludes that allowing Plaintiff to file  
19 a first amended complaint will not create undue delay and will not unduly prejudice the  
20 Defendants.

## 21 CONCLUSION

22 IT IS HEREBY ORDERED that the motion for leave to amend the complaint (Doc. 50)  
23 filed by Plaintiffs Alphonso and Ruth Richardson is GRANTED. Plaintiff shall file the First  
24 Amended Complaint as specifically set forth in Document 50-3 within 10 days of the date of  
25 this order.

26 DATED: March 3, 2009

27 

28 **WILLIAM Q. HAYES**  
United States District Judge