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

YUEH CHEN and CHEN C. WU,  
individuals,  
  
Plaintiffs,  
  
vs.  
PMC BANCORP, a California  
corporation, ONEHOMELoAN, ONE  
WEST BANK, FIDELITY NATIONAL  
TITLE COMPANY, NDEX WEST, LLC,  
DEUTSCHE BANK NATIONAL  
TRUST COMPANY, and DOES 1  
through 20,  
  
Defendants.

CASE NO. 09cv2704-WQH-BLM  
ORDER

HAYES, Judge:

The matters before the Court are the Motion for Judgment on the Pleadings, Or, Alternatively, Motion for Summary Judgment (“Motion for Judgment on the Pleadings”), filed by Defendants OneWest Bank, NDEX West, LLC, and Deutsche Bank National Trust Company (“OneWest Defendants”) (Doc. # 30); the Motion for Judgment on the Pleadings, Or, in the Alternative, Motion for Summary Judgment (“Motion for Judgment on the Pleadings”), filed by Defendant PMC Bancorp (“PMC”) (Doc. # 33); the Motion for Leave to File a Second Amended Complaint, filed by Plaintiffs Yueh Chen and Chen C. Wu (Doc. # 38); and the Ex Parte Application to Hear Motions Together, filed by Plaintiffs (Doc. # 39).

**Background**

On December 3, 2009, Plaintiffs initiated this action by filing a Complaint in this Court. (Doc. # 1). The Complaint asserted various causes of action related to a loan transaction.

1 On February 26, 2010, Plaintiffs filed a First Amended Complaint “as a matter of  
2 course” pursuant to Federal Rule of Civil Procedure 15(a). (Doc. # 24).

3 On March 17, 2010, the OneWest Defendants filed their Motion for Judgment on the  
4 Pleadings. (Doc. # 30).

5 On April 8, 2010, PMC filed its Motion for Judgment on the Pleadings. (Doc. # 33).

6 On April 20, 2010, Plaintiffs filed the Motion for Leave to File a Second Amended  
7 Complaint (Doc. # 38), and the Ex Parte Application to Hear Motions Together (Doc. # 39).  
8 Plaintiffs contend that “[f]urther auditing of Plaintiff’s loan documents and copies of  
9 Documents on file in Defendant’s [Request for Judicial Notice] have allowed Plaintiff to more  
10 accurately determine and state the roles of the individual Defendants in the dispute and to  
11 discover[] new evidence and allege new, legitimate claims for relief that Plaintiffs should be  
12 allowed to assert against the Defendants.” (Doc. # 38-1 at 4). Plaintiffs attached a proposed  
13 second amended complaint to the Motion. (Doc. # 38-2).

14 On April 21, 2010, the OneWest Defendants filed an opposition to the Motion for Leave  
15 to File a Second Amended Complaint. (Doc. # 41). On May 10, 2010, PMC filed an  
16 opposition to the Motion for Leave to File a Second Amended Complaint. (Doc. # 51).  
17 Defendants contend: the proposed amendments are futile (Doc. # 41 at 2; Doc. # 51 at 3);  
18 Plaintiffs “engaged in bad faith by filing a motion [for leave to amend] without any supporting  
19 evidence” (Doc. # 41 at 2); and Plaintiffs “have prejudiced Defendants by causing them to  
20 unnecessarily file 2 motions for judgment on the pleadings” (*id.*). Defendants request that the  
21 Court condition leave to amend on Plaintiffs’ payment of Defendants’ attorney fees for filing  
22 the motions for judgment on the pleadings. PMC contends: “[C]onsidering the pleading of  
23 additional claims, the court should dispose of the caps upon requests for admissions imposed  
24 by local rules, especially since PMC has already served written discovery.” (Doc. # 51 at 4).

### 25 Discussion

26 Rule 15 of the Federal Rules of Civil Procedure mandates that leave to amend “be freely  
27 given when justice so requires.” Fed. R. Civ. P. 15(a). “This policy is to be applied with  
28 extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir.

1 2003) (quotation omitted). In *Foman v. Davis*, 371 U.S. 178 (1962), the Supreme Court  
2 offered several factors for district courts to consider in deciding whether to grant a motion to  
3 amend under Rule 15(a):

4 In the absence of any apparent or declared reason—such as undue delay, bad faith  
5 or dilatory motive on the part of the movant, repeated failure to cure deficiencies  
6 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.’

7 *Foman*, 371 U.S. at 182; see also *Smith v. Pac. Prop. Dev. Co.*, 358 F.3d 1097, 1101 (9th Cir.  
8 2004) (citing *Forman* factors).

9 “Not all of the [*Foman*] factors merit equal weight. As this circuit and others have held,  
10 it is the consideration of prejudice to the opposing party that carries the greatest weight.”  
11 *Eminence Capital*, 316 F.3d at 1052 (citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183,  
12 185 (9th Cir. 1987)). “The party opposing amendment bears the burden of showing prejudice.”  
13 *DCD Programs*, 833 F.2d at 187. “Absent prejudice, or a strong showing of any of the  
14 remaining *Foman* factors, there exists a *presumption* under Rule 15(a) in favor of granting  
15 leave to amend.” *Eminence Capital*, 316 F.3d at 1052.

16 After reviewing the proposed second amended complaint and considering the  
17 submissions of the parties, the Court finds that the Motion for Leave to Amend should be  
18 granted. Any prejudice to Defendants in having to file the motions for judgment on the  
19 pleadings is not sufficient to overcome the presumption under Rule 15(a) in favor of granting  
20 leave to amend. Defendants’ requests for costs or sanctions are denied without prejudice to  
21 renew in the event Plaintiffs again seek leave to amend. PMC’s request “for dispos[al] of the  
22 caps upon requests for admissions imposed by local rules” (Doc. # 51 at 4) may be raised at  
23 an appropriate time before the Magistrate Judge.

24 Because Plaintiffs have been granted leave to file a second amended complaint, the  
25 Motions for Judgment on the Pleadings, which address the First Amended Complaint, are  
26 denied.

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**Conclusion**

IT IS HEREBY ORDERED that the Motion for Leave to File a Second Amended Complaint is granted. (Doc. # 38). No later than fourteen (14) days from the date this Order is filed, Plaintiffs shall file the proposed second amended complaint which is attached to the Motion for Leave to File a Second Amended Complaint.

The Motions for Judgment on the Pleadings are denied. (Doc. # 30, 33). The Ex Parte Application to Hear Motions Together is denied as moot. (Doc. # 39).

DATED: May 28, 2010

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