

1 complaint (Dkt. No. 26), which Defendants have opposed (Dkt. Nos. 35-37).

2 The Court finds the matter suitable for resolution without oral argument pursuant
3 to Local Civil Rule 7.1(d)(1). For the reasons set out below, the Court **GRANTS**
4 Plaintiffs' motion for leave to file an amended complaint, and **DENIES AS MOOT**
5 Defendants' motions to dismiss Plaintiffs' original Complaint.

6 **BACKGROUND**

7 In early 2006, Plaintiffs entered into a mortgage refinancing agreement with
8 lender Option One Mortgage Corporation through mortgage broker MD Mortgage.
9 (Dkt. No. 26 at 13-14, 19.) Soon afterward, Plaintiffs tried to cancel the agreement
10 because they received only about a \$15,000 payment, rather than the \$27,000 they had
11 allegedly agreed to and were expecting. (*Id.* at 14, 19.)

12 In June 2006, Plaintiffs filed a complaint in California state court against MD
13 Mortgage, Option One, and other defendants arising from the mortgage agreement and
14 alleging breach of the Truth in Lending Act ("TILA"), violations of the Real Estate
15 Settlement and Procedures Act ("RESPA"), breach of contract,
16 fraud/misrepresentation, breach of fiduciary duty/conversion, and quiet title. (Dkt.
17 No. 26 at 3; Dkt. No. 36 at 6.) Plaintiffs, through counsel, filed a first amended
18 complaint in March 2007 (Dkt. No. 36 at 36), and a second amended complaint in
19 December 2007 (Dkt. No. 36 at 7, 87).¹ In October 2008, the state trial court granted
20 summary judgment in favor of Option One. (Dkt. No. 36 at 170, 178.) On appeal, the

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23 ¹Defendant David Parker ("Parker") requests that the Court take judicial notice
24 of ten court records from Plaintiffs' prior state court action. (Dkt. No. 36-1.) Under
25 Federal Rule of Evidence 201, a district court may take notice of facts not subject to
26 reasonable dispute that are capable of accurate and ready determination by resort to
27 sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b).
28 Courts may take judicial notice of relevant court records under Federal Rule of
Evidence 201. *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) ("[W]e 'may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.'" (citation omitted)). Here, the Court finds that Defendant Parker's requests for judicial notice are properly noticeable, and therefore takes judicial notice of the documents.

1 Court of Appeal affirmed the trial court’s ruling on all of Plaintiffs’ claims against
2 Option One except one claim concerning California Financial Code section 50505.
3 (Dkt. No. 36 at 175, 205, 209; *see also* Dkt. No. 26 at 4.) In April 2011, the trial court
4 granted Option One’s motion for judgment on the pleadings on the sole remaining
5 claim, and entered judgment. (Dkt. No. 36 at 212-29.)

6 **PROCEDURAL HISTORY**

7 Over three years later, on August 1, 2014, Plaintiffs, proceeding *pro se*, filed this
8 action against IRS Agent Stephan Aloya, several attorneys, a paralegal, and various
9 successors-in-interest to their mortgage. (Dkt. No. 1.) The original Complaint contains
10 less than two pages of allegations and does not allege any causes of action, but includes
11 over one hundred pages of exhibits. (*Id.*)

12 In September 2014, some of the defendants – David Parker (Option One’s
13 attorney in the underlying state court action), 21st Mortgage Corporation, Ocwen
14 Servicing, LLC, and Litton Loan Servicing LLC (“Defendants”) – filed three separate
15 motions to dismiss or strike Plaintiffs’ Complaint. (Dkt. Nos. 11, 14, 16.) Plaintiffs
16 opposed, (Dkt. Nos. 28, 30, 32), and Defendants replied (Dkt. Nos. 38-40).

17 On November 20, 2014, while the motions to dismiss or strike the original
18 Complaint were pending, Plaintiffs filed a motion for leave to file an amended
19 complaint. (Dkt. No. 26.) Plaintiffs’ motion includes a copy of a proposed amended
20 complaint. (Dkt. No. 26 at 9-25.) The proposed amended complaint adds a few
21 defendants and alleges seven causes of action: (1) breach of TILA; (2) violations of
22 RESPA; (3) breach of contract; (4) fraud/misrepresentation; (5) breach of fiduciary
23 duty - conversion; (6) quiet title; and (7) negligence.

24 In December 2014, Defendants filed three oppositions to Plaintiffs’ motion for
25 leave to file an amended complaint. (Dkt. Nos. 35-37.) Plaintiffs did not reply.

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1 **DISCUSSION**

2 **A. Legal Standard Under Federal Rule of Civil Procedure 15(a)**

3 Under Federal Rule of Civil Procedure 15(a), leave to amend a complaint
4 after a responsive pleading has been filed may be allowed by leave of the court and
5 “shall freely be given when justice so requires.” *Foman v. Davis*, 371 U.S. 178,
6 182 (1962) (quoting Fed. R. Civ. P. 15(a)). Granting leave to amend rests in the
7 sound discretion of the trial court. *Int’l Ass’n of Machinists & Aerospace Workers*
8 *v. Republic Airlines*, 761 F.2d 1386, 1390 (9th Cir. 1985). This discretion must be
9 guided by the strong federal policy favoring the disposition of cases on the merits
10 and permitting amendments with “extreme liberality.” *DCD Programs, Ltd. v.*
11 *Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (citation and internal quotation marks
12 omitted). This liberality is “applied even more liberally to pro se litigants.”
13 *Eldridge v. Block*, 832 F.2d 1132, 1135 (9th Cir. 1987). “This liberality in granting
14 leave to amend is not dependent on whether the amendment will add causes of
15 action or parties.” *DCD Programs Ltd.*, 833 F.2d at 186; *but see Union Pac. R.R.*
16 *Co. v. Nev. Power Co.*, 950 F.2d 1429, 1432 (9th Cir. 1991) (In practice, however,
17 courts more freely grant plaintiffs leave to amend pleadings in order to add claims
18 than new parties).

19 Because Rule 15(a) favors a liberal amendment policy, the nonmoving party
20 bears the burden of demonstrating why leave to amend should not be granted.
21 *Genentech, Inc. v. Abbott Labs.*, 127 F.R.D. 529, 530-31 (N.D. Cal. 1989). In
22 assessing the propriety of an amendment, courts consider several factors: (1) undue
23 delay; (2) bad faith or dilatory motive; (3) repeated failure to cure deficiencies by
24 amendments previously permitted; (4) prejudice to the opposing party; and (5)
25 futility of amendment. *Foman*, 371 U.S. at 182; *United States v. Corinthian Colls.*,
26 655 F.3d 984, 995 (9th Cir. 2011). These factors are not equally weighted; the
27 possibility of delay alone, for instance, cannot justify denial of leave to amend,
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1 *DCD Programs*, 833 F.2d at 186, but when combined with a showing of prejudice,
2 bad faith, or futility of amendment, leave to amend will likely be denied. *Bowles v.*
3 *Reade*, 198 F.3d 752, 758 (9th Cir. 1999). The single most important factor is
4 whether prejudice would result to the non-movant as a consequence of the
5 amendment. *William Inglis & Sons Baking Co. v. ITT Cont'l Baking Co.*, 668 F.2d
6 1014, 1053 n.68 (9th Cir. 1981).

7 **B. Analysis**

8 Plaintiffs contend that they should be granted leave to amend because new
9 issues have developed in the case, defendants will not be prejudiced, and this is
10 Plaintiffs' first request to amend. (Dkt. No. 26 at 5-7.) Defendants argue that the
11 proposed amendment is futile. (Dkt. Nos. 35-37.) Specifically, Defendants argue
12 that Plaintiffs' causes of action in their proposed amended complaint fail to state a
13 claim because: (1) they are barred by the doctrines of res judicata and collateral
14 estoppel based on Plaintiffs' prior state court action; (2) they are time-barred by the
15 applicable statutes of limitations; (3) they fail to allege any wrongdoing by these
16 specific Defendants; and (4) Defendant Parker is protected by the litigation
17 privilege under California Civil Code § 47(b) for his representation of Option One
18 in Plaintiffs' prior state court proceedings. (*Id.*)

19 “[A] proposed amendment is futile only if no set of facts can be proved under
20 the amendment to the pleadings that would constitute a valid and sufficient claim or
21 defense.” *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988). Courts
22 ordinarily do not consider the validity of a proposed amended pleading in deciding
23 whether to grant leave to amend, and defer consideration of challenges to the merits
24 of a proposed amendment until after leave to amend is granted and the amended
25 pleadings are filed. *Netbula, LLC v. Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal.
26 2003); accord *Green Valley Corp. v. Caldo Oil Co.*, No. 09cv4028-LHK, 2011 WL
27 1465883, at *6 (N.D. Cal. April 18, 2011) (noting “the general preference against
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1 denying a motion for leave to amend based on futility.”). Arguments concerning the
2 sufficiency of the proposed pleadings, even if meritorious, are better left for briefing
3 on a motion to dismiss. *U.S. Bank Nat’l Ass’n v. Friedrichs*, No. 12cv2373-
4 GPC(KSC), 2013 WL 6686327, at *4 (S.D. Cal. Dec. 17, 2013); *Lillis v. Apria*
5 *Healthcare*, No. 12cv52-IEG(KSC), 2012 WL 4760908, at *1 (S.D. Cal. Oct. 5,
6 2012).

7 At this stage of the proceedings, the Court need not consider the validity of
8 the proposed amended complaint, and in light of the Ninth Circuit’s extremely
9 liberal policy favoring leave to amend, particularly in the *pro se* context, the Court
10 **GRANTS** Plaintiffs’ motion for leave to file an amended complaint. *See U.S. Bank*
11 *Nat’l Ass’n*, 2013 WL 6686327, at *4; *Lillis*, 2012 WL 4760908, at *1.

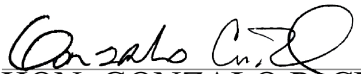
12 **CONCLUSION AND ORDER**

13 For the foregoing reasons, **IT IS HEREBY ORDERED:**

- 14 (1) the Court **GRANTS** Plaintiffs’ motion for leave to file an amended
15 complaint. (Dkt. No. 26.) Plaintiffs shall file their amended complaint
16 by **January 30, 2015**.
- 17 (2) the Court **DENIES AS MOOT** Defendants’ motions to dismiss
18 Plaintiffs’ original Complaint. (Dkt. Nos. 11, 14, 16.)
- 19 (3) the Court hereby **VACATES** the hearing date set for this matter on
20 January 23, 2015 at 1:30 p.m.

21 **IT IS SO ORDERED.**

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23 DATED: January 14, 2015

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25 HON. GONZALO P. CURIEL
26 United States District Judge
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