

1 (2) undue delay; (3) prejudice to the opposing party; (4) futility of the amendment; and (5) whether the
2 plaintiff has previously amended the complaint. *See id.* at 1052. These factors do not carry equal
3 weight, however, and prejudice is the touchstone of the analysis. *See id.* “Absent prejudice, or a strong
4 showing of any of the remaining . . . factors, there exists a *presumption* under Rule 15(a) in favor of
5 granting leave to amend.” *Id.* (emphasis in original). Because of the liberal policy in favor of
6 amendment, the party opposing the amendment bears the burden of showing why leave to amend should
7 be denied. *See, e.g., Desert Protective Council v. U.S. Dept. of the Interior*, 927 F. Supp. 2d 949, 962
8 (S.D. Cal. 2013) (citing *Genentech, Inc. v. Abbott Labs.*, 127 F.R.D. 529, 530-31 (N.D. Cal. 1989)).

9 In this case, Defendants have not met their burden of showing amendment should be denied.
10 Defendants’ responsive brief consists of conclusory attacks lacking meaningfully developed argument.
11 For example, Defendants contend that “some of the claims stated are subject to obvious statute of
12 limitations defenses which will make amendment futile.” Docket No. 37 at 3. No other detail is
13 provided, leaving unstated basic facts like which claims are purportedly untimely and what statute of
14 limitations applies. Such *ipse dixit* fails to satisfy the burden to oppose amendment. Similarly,
15 Defendants argue that they will be prejudiced because adding new claims and parties will enlarge the
16 scope of discovery. *Id.* at 3. Such is the situation with any amendment to add claims and parties, and
17 Defendants have provided no reason why that should be considered disqualifying prejudice in this case.

18 Having failed to satisfy its burden of showing leave to amend should be denied, Plaintiffs’
19 motion to file the second amended complaint is **GRANTED**.² Plaintiffs shall promptly file and serve
20 the amended complaint. *See* Local Rule 15-1.

21 IT IS SO ORDERED.

22 DATED: February 14, 2018

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24 _____
NANCY J. KOPPE
United States Magistrate Judge

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26 ² The Court does not herein definitively rule on the sufficiency of the allegations to state a claim, and
27 Defendants are not precluded from filing a motion to dismiss. *See, e.g., In re Dynamic Random Access*
28 *Memory (DRAM) Antitrust Litig.*, 356 F. Supp. 2d 1129, 1135-36 (N.D. Cal. 2008); *Netbula, LLC v. Distinct*
Corp., 212 F.R.D. 534, 539 (N.D. Cal. 2003).