

JAN 29 2016

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAN V. READE; JENET M. FOURES,

Plaintiffs - Appellants,

v.

CITIMORTGAGE INC.; DOES, 1-10,  
Inclusive,

Defendants - Appellees.

No. 13-57022

D.C. No. 3:13-cv-00404-L-WVG

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
M. James Lorenz, District Judge, Presiding

Submitted January 20, 2016\*\*

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

Dan V. Reade and Jenet M. Foures appeal from the district court's judgment dismissing without leave to amend their action alleging federal and state claims related to their mortgage. We have jurisdiction under 28 U.S.C. § 1291. We

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

review for an abuse of discretion the district court’s decision to dismiss without leave to amend. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc).

We affirm.

The district court did not abuse its discretion by dismissing without leave to amend because amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (explaining that “a district court may dismiss without leave where . . . amendment would be futile.”); *see also* N.Y. Bus. Corp. Law § 906(b)(2) (following a merger, the property of the constituent entities “shall vest in such surviving or consolidated corporation without further act or deed”).

We do not consider the district court’s dismissal order because plaintiffs failed to address the district court’s dismissal of their claims in their opening brief. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (“[A]rguments not raised by a party in its opening brief are deemed waived.”).

**AFFIRMED.**