

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
EASTERN DISTRICT OF CALIFORNIA

JOSEPH SANCHEZ,
Plaintiff,
v.
GMAC MORTGAGE, LLC,
Defendant.

No. 2:09-cv-03341-MCE-JFM

MEMORANDUM AND ORDER

-----oo0oo-----

This dispute arises out of a mortgage loan transaction that eventually led to the foreclosure of Plaintiff's home. Presently before the Court is a Motion by Defendant GMAC Mortgage, LLC ("Defendant") to Dismiss the claims alleged against it in the Complaint of Plaintiff Joseph Sanchez ("Plaintiff") for failure to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). Defendant also moves to strike portions of Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(f).¹

¹ Because oral argument will not be of material assistance, the Court orders this matter submitted on the briefs. E.D. Cal. Local Rule 78-230(h).

1 Plaintiff does not substantively oppose Defendant's Motion.
2 Rather, Plaintiff has submitted a statement indicating his
3 intention to file a First Amended Complaint which would thereby
4 render Defendant's Motion moot.

5 However, pursuant to Rule 15(a) as made effective on
6 December 1, 2009, a party may only amend its pleading once as a
7 matter of course within 21 days after service of a motion under
8 12(b), (e) or (f). Fed. R. Civ. P. 15(a)(1)(B). Defendant's
9 Rule 12(b) and 12(f) Motions were served on December 7, 2009.
10 Consequently, if Plaintiff wished to amend his Complaint as a
11 matter of course, he needed to do so on or before December 28,
12 2009. That date having passed, any amendment to Plaintiff's
13 Complaint now requires leave by this Court. Plaintiff may no
14 longer simply "moot" Defendant's Motions.

15 Therefore, in light of Plaintiff's failure to provide any
16 material opposition, Defendant's Motion to Dismiss and Motion to
17 Strike (Docket Nos. 8 and 10) are GRANTED. The Court will afford
18 Plaintiff leave to amend.

19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 Plaintiff may file an amended complaint not later than
2 twenty (20) days after the date this Memorandum and Order is
3 filed electronically. If no amended complaint is filed within
4 said twenty (20)-day period, without further notice, Plaintiff's
5 claims will be dismissed without leave to amend.

6 IT IS SO ORDERED.

7 Dated: February 11, 2010

8 
9

10 MORRISON C. ENGLAND, JR.
11 UNITED STATES DISTRICT JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28