

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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GARY L. FOSTER,

NO. CIV. 2:10-518 WBS GGH

Plaintiff,

v.

ORDER RE: MOTION FOR LEAVE TO  
AMEND COMPLAINT AND MOTION TO  
STRIKE

SCME MORTGAGE BANKERS, INC. a California corporation; CLEVER KEY FINANCIAL, LLC, a California limited liability company; WEST COAST MORTGAGE, a business entity of unknown form, HOMECOMING FINANCIAL, LLC, a Delaware limited liability company f/k/a HOMECOMINGS FINANCIAL NETWORK, INC.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. a Delaware corporation; AURORA LOAN SERVICERS, LLC a Delaware limited liability company; CAL-WESTERN RECONVEYANCE CORPORATION, a California corporation; FREDERICK WINSTON WILLIAMS II, an individual; and DEBORAH DIAZ, an individual.

## Defendants.

1           Because oral argument will not be of assistance to the  
2 court in ruling on defendants' motion to strike and plaintiff's  
3 motion for leave to amend, the hearing date of June 21, 2010 for  
4 those motions is VACATED pursuant to Local Rule 230(g) and the  
5 court will take the motions under submission without oral  
6 argument.

7           Federal Rule of Civil Procedure 15(a) provides that  
8 plaintiffs may amend their complaint once as a matter of course  
9 within twenty-one days of, inter alia, the service of a Rule  
10 12(b) motion by the defendant. Fed. R. Civ. P. 15(a)(1). In all  
11 other circumstances, the plaintiff must receive the opposing  
12 party's written consent or leave of the court before amending his  
13 complaint. Fed. R. Civ. P. 15(a)(2). Courts evaluating a motion  
14 for leave to amend "should freely give leave when justice so  
15 requires." Fed. R. Civ. P. 15(a)(2).

16           Plaintiff filed a First Amended Complaint ("FAC") on  
17 April 28, 2010 (Docket No. 33), twenty-three days after  
18 defendants Mortgage Electronic Registration Systems, Inc.  
19 ("MERS") and Aurora Loan Services ("Aurora") filed a motion to  
20 dismiss (Docket No. 19) and without first obtaining a stipulation  
21 from all parties or leave of the court pursuant to Rule 15(a)(2).  
22 MERS and Aurora filed a motion to strike plaintiff's FAC pursuant  
23 to Rule 12(f) for failure to obtain a stipulation of the parties  
24 (Docket No. 39), and plaintiff subsequently filed a motion for  
25 leave to amend his Complaint. (Docket No. 50.) While the FAC  
26 repeats much of plaintiff's original Complaint, it adds  
27 considerable more detail to plaintiff's Truth in Lending Act, 15  
28 U.S.C. § 1601, cause of action and deletes plaintiff's cause of

1 action for violation of California Civil Code section 2943. (See  
2 FAC.) At this early stage in the proceedings, any prejudice or  
3 delay to defendants is minimal. The court will therefore grant  
4 plaintiff's motion for leave to amend his Complaint.

5 IT IS THEREFORE ORDERED that plaintiff's motion for  
6 leave to amend his Complaint be, and the same hereby is, GRANTED.

7 IT IS FURTHER ORDERED that defendants' motion to strike  
8 is DENIED.

9 Plaintiff's First Amended Complaint (Docket No. 33)  
10 filed April 28, 2010, and attached as Exhibit A to plaintiff's  
11 motion for leave to amend (Docket No. 50), is hereby considered  
12 the operative Complaint in this action.

13 DATED: June 17, 2010

14   
15 WILLIAM B. SHUBB

16 UNITED STATES DISTRICT JUDGE

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