

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH EDWARD MARTY,

Plaintiff,

No. CIV S-10-0555 GEB DAD PS

vs.

WELLS FARGO BANK, et al.,

ORDER

Defendants.

_____ /

On May 14, 2010, plaintiff filed an amended complaint. Under the Federal Rules of Civil Procedure, any party may amend its pleading once as a matter of course within

- (A) 21 days after serving it, or
- (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Fed. R. Civ. P. 15(a)(1) (as amended effective Dec. 1, 2009). Here, plaintiff's 21-day period for amending his pleading as a matter of course began to run on April 21, 2010 when defendant First American Loanstar Trustee Services served its Rule 12(b) motion now pending before the court. Three days are added to the 21-day period because the motion was served by mail. See Fed. R. Civ. P. 6(d) & Fed. R. Civ. P. 5(b)(2)(C). Plaintiff's amended complaint was filed within 24 days after April 21, 2010, and has therefore been filed as a matter of course. Plaintiff is

1 cautioned that he may not amend his complaint further except with the written consent of all
2 opposing parties or with leave of court, which may be obtained only by filing a properly noticed
3 motion for leave to amend.

4 Plaintiff's amended complaint names an additional defendant. The Clerk will be
5 directed to issue summons for the new defendant. Defendants Wells Fargo Bank and First
6 American Loanstar Trustee Services will be granted thirty days to respond to plaintiff's amended
7 complaint. If defendants file new motions to dismiss, counsel shall confer and set the motions
8 for hearing on the same date. Information about available law and motion dates and about
9 telephonic appearance may be obtained from Pete Buzo, courtroom deputy to the undersigned, at
10 930-4128.

11 IT IS ORDERED that:

12 1. Plaintiff's amended complaint filed May 14, 2010 (Doc. No. 20) has been filed
13 as a matter of course and supersedes the pleading filed March 9, 2010;

14 2. The Clerk of the Court shall issue summons for defendant Mortgage Electronic
15 Registration Systems, Inc. (MERS);

16 3. The motions to dismiss filed by defendant First American Loanstar Trustee
17 Services on April 21, 2010 (Doc. No. 10) and by defendant Wells Fargo Bank, N.A. on May 6,
18 2010 (Doc. No. 16) are denied as moot, and the motions are dropped from the court's June 18,
19 2010 and June 25, 2010 calendars; and

20 4. Defendants shall respond to plaintiff's amended complaint within thirty days
21 from the date this order is filed.

22 DATED: May 21, 2010.

23
24 
25 _____
26 DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

25 DAD:kw
26 Ddad1\orders.prose\marty0555.ord.mtdmoot