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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRIAN THIEL,

No. 2:10-cv-00645-MCE-DAD

Plaintiff,

v.

ORDER

GMAC MORTGAGE, LLC and DOES 1
through 100, inclusive

Defendants.

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Presently before the Court is a Motion by Plaintiff Brian Thiel ("Plaintiff") to Amend Judgment pursuant to Federal Rule of Civil Procedure Rule¹ 59(e), or in the alternative a Motion for Relief From Judgment pursuant to Rule 60(b)². Defendant GMAC Mortgage, LLC ("Defendant") opposes.

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¹ All further references to "Rule" or "Rules" are to the Federal Rules of Civil Procedure unless otherwise noted.

² Because oral argument will not be of material assistance, the Court orders this matter submitted on the briefs. E.D. Cal. Local Rule 230(g).

1 At issue are the Court's previous orders regarding the
2 dismissal of Plaintiff's claims. On September 3, 2010, the Court
3 granted Defendant's Motion to Dismiss Plaintiff's First Amended
4 Complaint except as to Plaintiff's cause of action for fraud,
5 which the court allowed to stand (ECF No. 29). On September 22,
6 2010, Plaintiff filed a Second Amended Complaint, which asserted
7 a cause of action for breach of contract and included the
8 previous fraud cause of action (ECF No. 30). Defendant moved to
9 dismiss the Second Amended Complaint (ECF No. 32), and on
10 January 27, 2011, the Court granted Defendant's Motion to Dismiss
11 in its entirety with prejudice (ECF No. 37). Specifically
12 addressing the discrepancy regarding the fraud cause of action,
13 the Court explained that while it had previously denied
14 Defendant's request to dismiss the fraud claim, upon further
15 review, Plaintiff's claim was factually void of a cognizable
16 right of action, and no evidence was provided to the Court that
17 properly met the legal standard to sustain a claim. Plaintiff
18 was not given leave to amend.

19 Plaintiff now moves for a judgment overturning the Court's
20 recent decision. Plaintiff's motion pursuant to Rule 59(e) is
21 not timely, and therefore will be treated as a Motion under Rule
22 60(b).³ See Am. Ironworks & Erectors, Inc. v. N. Am. Const.
23 Corp., 248 F.3d 892, 899 (9th Cir. 2001).

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27 ³ A motion to alter or amend a judgment must be filed no
28 later than 28 days after the entry of judgment. Rule 59(e).
Plaintiff's Motion was filed 32 days after the Court's order.

1 Under Rule 60(b)(1), the moving party is entitled to relief from
2 judgment under a few enumerated circumstances, most applicable
3 here for "mistake, inadvertence, surprise, or excusable
4 neglect."⁴ Specifically, Plaintiff contends that it was "unfair"
5 to Plaintiff that the cause of action for fraud was dismissed
6 without leave to amend from the Second Amended Complaint, after
7 the Court had previously denied Defendant's Motion to Dismiss the
8 fraud cause of action from Plaintiff's First Amended Complaint.
9 See Plaintiff's Mot. at 3.

10 The Court rejects Plaintiff's "shock" that the Court could
11 revisit its responses to a previous complaint, particularly since
12 an amended complaint obliterates the existence of any previous
13 complaint. Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th
14 Cir. 1997) (quoting Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
15 1967)). Since each amended complaint stands on its own, each
16 cause of action is newly examined by the Court.⁵

17 Further, the Court is authorized to revisit any previous
18 order, and amend or edit it accordingly. Rule 54(b) explains
19 that any order that "adjudicates fewer than all the claims or the
20 rights and liabilities" of the parties "may be revised at any
21 time before the entry of a judgment adjudicating all the claims."
22

23 ⁴ The other factors are not present, which include newly
24 discovered evidence, fraud, a void judgment, or other reason
justifying relief. See Rule 60(b).

25 ⁵ The Court similarly rejects Plaintiff's contention that
26 had he known "that the door was still open for Defendant to raise
the fraud issue again," he would have acted differently.
27 (Plaintiff's Mot. at 4.) As Defendant rightly explained in their
motion, an attorney's ignorance of the law or carelessness does
28 not constitute entitlement to relief under the law. See Engleson
v. Burlington N. R. Co., 972 F.2d 1038, 1043-44 (9th Cir. 1992).

1 Therefore, pursuant to Rule 54(b), the Court had ample discretion
2 to revisit and correct its previous order.

3 Plaintiff had two opportunities to amend his complaint,
4 present his arguments, and attempt to sustain a claim upon which
5 relief could be granted. Plaintiff failed to do so, and
6 therefore, the Motion to Alter or Amend the Judgment (ECF No. 39)
7 is DENIED.

8 IT IS SO ORDERED.

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10 Dated: April 6, 2011

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MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE