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

JAMES L. MACKLIN,

Plaintiff,

No. 2:10-cv-01097 FDC KJN PS

vs.

SELECT PORTFOLIO SERVICING,
INC., et al.,

Defendants.

ORDER

_____ /


On May 7, 2010, defendants Matthew Hollingsworth, Robert J. Jackson, Amy E. Starrett, and R.K. Arnold filed a motion to dismiss plaintiff's complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6), with a hearing date of June 17, 2010. (Dkt. No. 11.) On June 4, 2010, plaintiff filed a notice of intent to file a first amended complaint and a first amended complaint. (Dkt. Nos. 12, 13.) Although Federal Rule of Civil Procedure 15(a)(1)(B) states that a party may amend a pleading once as a matter of course within 21 days after service of a Rule 12(b) motion, and plaintiff's amended pleading was filed beyond that 21 days, the court finds that leave to amend should be given in this case. Therefore, plaintiff's amended complaint will be deemed the currently operative complaint in this action. Further, the defendants' June 17, 2010 motion to dismiss will be deemed moot and will be removed from this

1 court's calendar.¹

2 The court also notes that plaintiff's amended complaint states in the caption that
3 plaintiff is filing an "amended complaint for temporary restraining order." (Dkt. No. 13 at 1.)
4 The court does not construe the caption of plaintiff's amended complaint in and of itself as an
5 affirmative request for immediate injunctive relief. To the extent that plaintiff intends to seek
6 relief by way of a temporary restraining order, he must do so by filing additional documents and
7 complying with further temporary restraining order procedures as set forth in the relevant Local
8 and Federal rules. See e.g., Local Rule 231 (specifying, among other things, the documents
9 necessary to request a temporary restraining order); see also Fed. R. Civ. P. 65.

10 **IT IS SO ORDERED.**

11 DATED: June 10, 2010

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15 KENDALL J. NEWMAN
16 UNITED STATES MAGISTRATE JUDGE
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26 ¹ Defendants retain the right to timely file a subsequent motion to dismiss, if so desired.