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7   UNITED STATES DISTRICT COURT

8   FOR THE EASTERN DISTRICT OF CALIFORNIA

9
THOMAS STEVENS DUMAS,
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                              NO. CIV. S-10-1523 LKK/KJM
11   Plaintiff,

12   v.
                              O R D E R
13 FIRST NORTHERN BANK, dba
    FIRST NORTHERN, et al.,
14

15   Defendants.

16 _____/

17   Plaintiff in this case brings numerous claims arising out of

18 his home loan and mortgage. On May 5, 2010, plaintiff filed his

19 complaint in state court. On June 16, 2010, defendant JP Morgan

20 Chase Bank, N.A. ("JP Morgan") removed the complaint to this court.

21 On June 22, 2010, JP Morgan filed a motion to dismiss all claims

22 against it, which was set to be heard on August 9, 2010. The court

23 vacated the hearing on this motion. Plaintiff timely opposed this

24 motion.

25   On September 7, 2010, defendant Paramount Residential Mortgage

26 Group, Inc. ("Paramount") filed a motion to dismiss all claims

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against it, which was set to be heard on October 12, 2010. Plaintiff did not timely oppose this motion. On October 4, 2010, the court ordered plaintiff to show cause in writing why sanctions of a fine of $150 and/or dismissal of this case should not issue. The court also continued the hearing on Paramount's motion until October 25, 2010. On October 5, 2010, plaintiff filed an amended complaint. He did not seek leave of this court or the written consent of defendants. On October 8, 2010, plaintiff timely filed a response to the order to show cause. Plaintiff's counsel stated that he decided to dismiss certain causes of action, add some causes of action, and add a new defendant. He reduced the number of claims from seventeen to eight. He also indicated that he believed that an amended complaint may be filed under Fed. R. Civ. P. 15(a) in place of an opposition to any motion to dismiss. This is not the case. Under Fed. R. Civ. P. 15(a)(1)(B), as amended December 1, 2009, a plaintiff may amend a complaint once as a matter of course within 21 days after service of a motion under Rule 12(b), (e), or (f) if no earlier responsive pleading has been filed. Here, the first motion under Rule 12(b) was filed on June 16, 2010, and plaintiff's right to amend as a matter of course expired on July 7, 2010. Rather, plaintiff may only amend its pleading with the defendants' written consent or leave of this court. Fed. R. Civ. P. 15(a)(2). The Rules instruct courts to "freely give leave when justice so requires." Id. For this reason, the court construes plaintiff's response to the order to show cause as a motion for leave to file an amended complaint. The court

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1 | grants the motion for leave. Plaintiff shall file his amended
2 | complaint within seven (7) days of the issuance of this order.

3 | Plaintiff's counsel has not, however, demonstrated good cause
4 | for his failure to file an opposition. The Federal Rules were
5 | amended almost a year ago. The Local Rules of the Eastern District
6 | of California clearly state that oppositions or statements of non-
7 | opposition must be filed fourteen days before a hearing. Local Rule
8 | 230(c).

9 | For the foregoing reasons, the court ORDERS as follows:

10 | (1)   Plaintiff is granted leave of seven (7) days to file an
11 | amended complaint.

12 | (2)   All pending motions to dismiss, ECF Nos. 7, 15, are
13 | DENIED without prejudice, as moot.

14 | (3)   The hearing set on Paramount's motion, ECF No. 15, is
15 | VACATED.

16 | (4)   Counsel for plaintiff is SANCTIONED in the amount of one
17 | hundred and fifty ($150.00) dollars. This sum shall be
18 | paid to the Clerk of the Court no later than thirty (30)
19 | days from the date of this order. Counsel shall file an
20 | affidavit accompanying the payment of this sanction
21 | which states that it is paid personally by counsel, out
22 | of personal funds, and is not and will not be billed,
23 | directly or indirectly, to the client or in any way made
24 | the responsibility of the client as attorneys' fees or
25 | costs.

26 | ////

1   IT IS SO ORDERED.

2   DATED: October 15, 2010.

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5   LAWRENCE K. KARLTON
     SENIOR JUDGE
6   UNITED STATES DISTRICT COURT

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