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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

IVAN MEGEDIUK,

Plaintiff,

v.

WELLS FARGO BANK, N.A.,
et al.,

Defendants.

NO. CIV. S-10-2777 LKK/JFM

O R D E R

_____ /

Plaintiff in this case brings numerous claims against defendants arising out of his home mortgage. On October 13, 2010, defendants Wachovia Mortgage and Golden West Savings Association Service Co. ("Golden West") removed the instant action to federal court on the grounds that this court has subject matter jurisdiction over the case because it raises a federal question and because the parties are diverse. (ECF No. 1). On October 20, 2010, these same defendants filed a motion to dismiss all claims against them and a motion to strike portions of the complaint. (ECF Nos. 4, 5). These motions are set to be heard on November 22, 2010.

1 Instead of filing an opposition or statement of non-opposition
2 to the motions, plaintiff filed a motion to file an amended
3 complaint on November 5, 2010. (ECF No. 8) While he failed to
4 attach a proposed amended complaint, as required by E.D. Cal. Local
5 Rule 137(c), he nonetheless specifically identified the changes he
6 intends to make in the amended complaint. In particular, he
7 requests leave to amend his complaint to remove all allegations
8 concerning violations of the federal Truth in Lending Act. On the
9 same day, plaintiff filed a motion to remand this case to state
10 court, which is set to be heard on December 6, 2010. In this
11 motion, plaintiff argues that the parties are not completely
12 diverse because both he and defendant Golden West are citizens of
13 California.

14 Plaintiff cannot amend as a matter of course because he filed
15 his motion to amend more than twenty-one days after serving his
16 complaint. See Fed. R. Civ. P. 15(a)(1). Nonetheless, courts
17 "should freely give leave when justice so requires." Fed. R. Civ.
18 P. 15(a)(2).

19 For the foregoing reasons, the court ORDERS as follows:

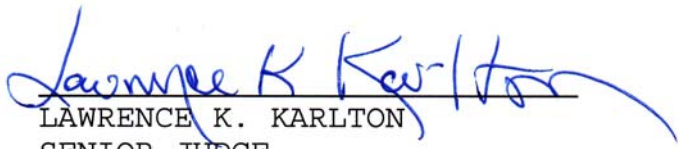
20 (1) Plaintiff's motion for leave to file an amended
21 complaint (ECF No. 8) is GRANTED. Plaintiff shall file
22 his amended complaint by 9:00 a.m. on Friday November
23 12, 2010.

24 (2) Defendants' motions to dismiss and to strike (ECF Nos.
25 4, 5) are DENIED WITHOUT PREJUDICE as moot. The hearing

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on these motions, set for November 22, 2010, is VACATED.
IT IS SO ORDERED.
DATED: November 10, 2010.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT