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

MARK A. GRANT,

Plaintiff,

No. 2:11-cv-00360 LKK KJN PS

v.

UNITED STATES OF AMERICA,
et al.,

Defendants.

ORDER

Presently before the court is plaintiff's motion to strike defendants' Amended Answer to plaintiff's First Amended Complaint.¹ Because oral argument would not materially aid the resolution of the pending motion, this matter is submitted on the briefs and record without a hearing. See Fed. R. Civ. P. 78(b); E. Dist. Local Rule 230(g). The undersigned has considered the briefs and appropriate portions of the record in this case and, for the reasons stated below, denies plaintiff's motion to strike.

Plaintiff filed his First Amended Complaint on July 21, 2011 (Dkt. No. 56), which was deemed appropriately filed by stipulation of the parties (Dkt. No. 55). On September 8, 2011, defendants filed an answer to plaintiff's First Amended Complaint (Dkt. No. 57).

¹ This case proceeds before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 However, on September 29, 2011, defendants filed an Amended Answer to the First Amended
2 Complaint (Dkt. No. 59).

3 On September 29, 2011, plaintiff filed a motion to strike defendants' *original*
4 answer to the First Amended Complaint (Dkt. No. 62), which the court subsequently denied as
5 moot because defendants had filed their Amended Answer (see Order, Oct. 11, 2011, Dkt.
6 No. 64). In the court's order denying plaintiff's first motion to strike, the court found that
7 defendants had timely filed their Amended Answer as a matter of course pursuant to Federal
8 Rule of Civil Procedure 15(a)(1)(A). (Id. at 1-2.)

9 Nevertheless, on October 11, 2011, plaintiff filed a motion to strike the Amended
10 Answer as untimely filed and filed without plaintiff's consent (Dkt. No. 65). Defendants filed a
11 written opposition on October 12, 2011, correctly noting that the court has already determined
12 that defendants had appropriately filed their Amended Answer (Dkt. No. 66). The undersigned
13 denies plaintiff's motion to strike the Amended Answer because, as the court previously found,
14 defendants timely filed their Amended Answer as a matter of course, and that filing did not
15 require plaintiff's consent. See Fed. R. Civ. P. 15(a)(1)(A) (providing that a party may amend its
16 pleading once as a matter of course within 21 days after serving it).

17 Accordingly, IT IS HEREBY ORDERED that:

18 1. The November 17, 2011 hearing on plaintiff's motion to strike is vacated
19 and this matter is submitted without a hearing.

20 2. Plaintiff's motion to strike defendants' Amended Answer (Dkt. No. 65) is
21 denied.

22 IT IS SO ORDERED.

23 DATED: October 19, 2011

24 
25 KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE