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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID L. BRINK,
Plaintiff,
v.
ALTERNATIVE LOAN TRUST 2006-
39CB; BANK OF NEW YORK MELLON,
Defendants.

No. 2:13-cv-0862 LKK DAD PS

ORDER

Plaintiff David Brink, proceeding pro se, commenced this action on May 2, 2013, by filing a complaint and paying the required filing fee. On August 13, 2013, defendants executed a Waiver of Service of Summons. (Doc. No. 14.) On November 5, 2013, plaintiff filed a motion for leave to file an amended complaint (Doc. No. 28), and an amended complaint. (Doc. No. 29.) In moving for leave to amend, plaintiff asserts that he “has identified additional claims that need to be added to the complaint” (Doc. No. 28 at 2.)

Under Rule 15 of the Federal Rules of Civil Procedure, plaintiff may amend his complaint once as a matter of course within twenty-one days after serving it or twenty-one days after service of a responsive pleading or motion pursuant to Rule 12(b). See FED. R. CIV. P. 15. In all other cases, plaintiff may amend his complaint with defendant’s written consent or the court’s leave. Id. “The court should freely give leave when justice so requires.” In light of this

1 lenient standard, the court will grant plaintiff's motion for leave to file an amended complaint.

2 On November 6, 2013, defendants filed a motion to dismiss plaintiff's original
3 complaint.¹ (Doc. Nos. 21 & 26.) Accordingly, defendants' motion will be denied without
4 prejudice as having been rendered moot by this order granting leave to amend.

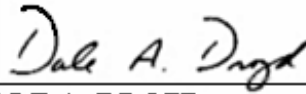
5 Accordingly, IT IS ORDERED that:

6 1. Plaintiff's November 5, 2013 motion for leave to file the amended complaint
7 (Doc. No. 28) is granted;

8 2. The amended complaint filed November 5, 2013 (Doc. No. 29) is now the
9 operative complaint; and

10 3. Defendants' November 6, 2013 motion to dismiss (Doc. No. 21), re-noticed for
11 hearing before the undersigned (Doc. No. 26), is denied without prejudice as having been
12 rendered moot.

13 Dated: November 12, 2013

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16 DALE A. DROZD
17 UNITED STATES MAGISTRATE JUDGE

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27 ¹ Although plaintiff filed his motion for leave to amend and his proposed amended complaint on
28 November 5, 2013, those documents were not entered into the court's CMECF system until
November 6, 2013, the same day defendants filed the motion to dismiss.