

United States District Court  
For the Northern District of California

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

MAROUANE OUZIZ,

Plaintiff,

No. C 08-02201 WHA

v.

CAPITAL ONE SERVICES, GREGORY  
TEETER, individually and as agent for  
CAPITOL MORTGAGE CORPORATION,  
AMANDA RAWLS, individually and as agent  
for CAPITOL MORTGAGE  
CORPORATION, and KEVEN NAFAL,

Defendants.

**ORDER DENYING  
PLAINTIFF’S MOTION  
TO AMEND AND  
VACATING HEARING**

Plaintiff Marouane Ouziz moves for leave to file a first amended complaint pursuant to FRCP 15(a). FRCP 15(a) provides that a party may amend a pleading once as a matter of course at any time before a responsive pleading is served. Responsive pleadings were filed in this action more than four months ago. Once a party has been served with a responsive pleading, the “party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a). Defendant GreenPoint Mortgage Funding, Inc., has filed an opposition to plaintiff’s motion for leave to amend. A district court should nonetheless freely give leave to amend when justice so requires, absent a showing of bad faith, dilatory motive, or undue prejudice to another party. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Pursuant to the case management order governing this case, the parties were given until October 30, 2008, to seek leave to amend pleadings or add new parties. Plaintiff filed this

1 motion one day earlier. Though filed just in the nick of time, plaintiff failed in the process to  
2 supply a proposed amended complaint in contravention of the Northern District of California's  
3 Local Rules of Practice in Civil Proceedings. Civil Local Rule 10-1 provides that "[a]ny party  
4 filing or moving to file an amended pleading must reproduce the entire proposed pleading and  
5 may not incorporate any part of a prior pleading by reference." It is the proposed amended  
6 pleading that allows a court to review changes and determine whether "justice requires"  
7 granting leave to amend.

8         Instead of supplying the proposed amended complaint, plaintiff's counsel supplied an  
9 amended complaint he filed on behalf of a different plaintiff in a different action pending  
10 before the Northern District of California, *Allan v. GreenPoint*, Case No. 08-01534 MHP  
11 (N.D. Cal). His rationale is that "the facts, allegations, causes of action and relief requested in  
12 the two cases are nearly identical" and that his amended complaint in this action is "very near  
13 complete" as evidenced by his filing in the other action. This rationale is unavailing. Were it  
14 true that the two amended complaints "are nearly identical" then presumably plaintiff's  
15 counsel would not have been unduly burdened by supplying the proposed amended complaint  
16 in this action in October when he filed the other. Moreover, plaintiff's assertion that the  
17 proposed amended complaint "is very nearly complete" is belied by the fact that, even now,  
18 more than one month after moving for leave to amend, plaintiff has yet to supply it.

19         For the foregoing reasons, plaintiff's motion for leave to amend is **DENIED** without  
20 prejudice. Should he chose to renew his motion, he must do so in accordance with Civil Local  
21 Rule 10-1. In addition, because the deadline for filing such a motion has elapsed, the  
22 presumption underlying FRCP 15(a) that leave to amend shall be freely given is no longer in  
23 force. FRCP 16 is now in play. FRCP 16 allows a party to seek relief from court-imposed  
24 deadlines only upon a showing of good cause. *Coleman v. Quaker Oats Co.*, 232 F.3d 1271,  
25 1294 (9th Cir. 2000). The focus is on the diligence of the party seeking amendment.  
26 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Any renewed  
27 motion for leave to amend had better present a good reason to grant such leave. Finding no  
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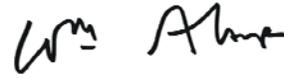
1 further argument necessary, the hearing set for December 11, 2008, at 8:00 a.m. is hereby  
2 **VACATED.**

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4 **IT IS SO ORDERED.**

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6 Dated: December 4, 2008.



7 WILLIAM ALSUP  
8 UNITED STATES DISTRICT JUDGE

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