

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

MARC ANTHONY BENCIVENGA,

No. C 11-04128 SI

Plaintiff,

**ORDER GRANTING PLAINTIFF’S EX  
PARTE APPLICATION TO ENLARGE  
TIME TO FILE FIRST AMENDED  
COMPLAINT**

v.

US BANK, NATIONAL ASSOCIATION, as  
Trustee of GSAA HOME EQUITY TRUST,  
Series 2005-11, BARRETT DAFFIN FRAPPIER  
TREDER & WEISS LLP, GRACE EVERITT,  
DOES 1-10

Defendant.

On December 7, 2011, the Court granted defendants’ motion to dismiss plaintiff’s complaint, but granted plaintiff leave to amend. Plaintiff was given until January 7, 2012 to file an amended complaint. On January 9, 2012, plaintiff filed an ex parte application to enlarge time to file the amended complaint by twenty days. Defendant U.S. Bank thereafter filed an opposition on January 10, 2012.


Defendant argues that plaintiff is judicially estopped from raising the underlying claims in this action because plaintiff failed to list them in his March 2011 bankruptcy petition. In an attached declaration, plaintiff’s counsel states that he has recently petitioned the bankruptcy court to reopen the now-closed bankruptcy case and amend plaintiff’s bankruptcy petition to add the instant claim against defendants. Plaintiff argues that once the petition is amended, “the Chapter 7 Trustee can determine whether he will prosecute the claim or abandon the claim to allow plaintiff to continue the prosecution of his civil case.” See Ex Parte App., Doc. 34 at 2. Plaintiff represents that the complaint will be “prepared and ready for filing” upon receipt of ruling on the motion to amend in the Bankruptcy Court.

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The Court GRANTS plaintiff's application, and enlarges the time to file the amended complaint to **February 1, 2012**. The Court cautions plaintiff's counsel to act expeditiously, as the Court does not anticipate granting any further requests to extend time.

**IT IS SO ORDERED.**

Dated: January 12, 2012

  
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SUSAN ILLSTON  
United States District Judge