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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARLON MONTOYA,

Plaintiff,

vs.

GENERAL ELECTRIC CAPITAL
CORPORATION,

Defendant.

Case No.: 13-cv-04612-YGR

**ORDER TERMINATING MOTION TO DISMISS
(DKT. NO. 7)**

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Defendant filed a Motion to Dismiss Plaintiff's First Cause of Action for Failure to State a Claim Upon Which Relief Can Be Granted on October 11, 2013. (Dkt. No. 7.) On October 24, 2013, Plaintiff filed a First Amended Complaint. (Dkt. No. 14.)

Federal Rule of Civil Procedure 15(a) provides that a party may amend a pleading—here, the complaint—once as a matter of course if filed within 21 days after service of a motion under Rule 12(b), (e), or (f). Plaintiff's First Amended Complaint was filed within the permitted time period after Defendant filed its Motion to Dismiss. As such, that complaint is the operative complaint in this action.

In light of the above, Defendant's Motion to Dismiss (Dkt. No. 7) is hereby **TERMINATED** as moot. The hearing scheduled for December 10, 2013 is hereby **VACATED**.

The hearing scheduled on Defendant's Motion to Dismiss Plaintiff's First Cause of Action for Failure to State Claim Upon Which Relief Can Be Granted From His First Amended Complaint (Dkt. No. 15) remains on calendar for January 21, 2014 at 2:00 p.m.

This Order terminates Dkt. No. 7.

IT IS SO ORDERED.

Date: November 20, 2013


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE