

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FAREED SEPEHRY-FARD,
Plaintiff,
v.
MB FINANCIAL SERVICES,
Defendant.

Case No. [13-cv-02784-BLF](#)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT; DENYING
DEFENDANT'S MOTIONS AS MOOT**
[Re: ECF 95, 97, 98]

United States District Court
Northern District of California

Before the Court are three motions by the parties: (1) the “Motion With [sic] Leave of Court to File Third Amended Complaint” filed by *pro se* plaintiff Fareed :Sepehry-Fard on July 1, 2014, (Pl.’s Mot., ECF 95); (2) the Motion to Dismiss Unfair Competition Law Claim from Plaintiff’s Second Amended Complaint (“SAC”) filed by defendant Mercedes-Benz Financial Services USA LLC, erroneously sued as MB Financial Services, on July 3, 2014, (Def.’s MTD, ECF 97); and (3) the Motion to Strike Portions of Plaintiff’s Second Amended Complaint also filed by Defendant on July 3, 2014, (Def.’s MTS, ECF 98).

Plaintiff seeks leave to file a Third Amended Complaint (“TAC”) comprising sixteen claims beginning with a “6th Cause of Action.” *See* Pl.’s Mot. Exh. 1. On July 11, 2014, Defendant filed a “Notice of Non-Opposition to Plaintiff’s Motion for Leave of Court to File Third Amended Complaint.” Def.’s Non-Opp., ECF 101. Defendant indicated that it did not object to this Court granting Plaintiff leave to file his proposed TAC and that it intended to respond to the TAC with all motions appropriate pursuant to Federal Rule of Civil Procedure 12. *Id.* at 3. Plaintiff on July 16, 2014 filed a reply to Defendants’ Non-Opposition. Pl.’s Reply, ECF 102. Plaintiff’s reply did not indicate that he wished to withdraw his motion for leave to amend. Instead, Plaintiff stated cryptically that “Plaintiff does not believe that TAC overrides SAC, it was

1 and still is Plaintiff's believe [unless court clarifies otherwise] that the complaints complemented
2 each other, that is why Plaintiff started TAC's causes of actions with numeral 6 instead of 1." *Id.*
3 ¶ 9.

4 This Court has on two previous occasions informed Plaintiff that an amended pleading or a
5 proposed amended pleading must be able to stand by itself without reference to previous
6 pleadings. *See* Order Granting Motion to Dismiss First Amended Complaint 3-4, ECF 85; Order
7 Striking Motion for Leave to File Third Amended Complaint 2, ECF 94. It is not clear what
8 Plaintiff intended to accomplish by beginning his proposed TAC with the "6th Cause of Action."¹
9 However, in light of the fact that Defendant does not oppose Plaintiff's request to amend and
10 Plaintiff does not wish to withdraw his motion, the Court GRANTS Plaintiff's motion with the
11 following proviso: the Court will not permit Plaintiff to revive any claim that has already been
12 dismissed with prejudice from this action. Plaintiff shall accordingly remove the Fair Debt
13 Collection Practices Act ("20th Cause of Action") from the TAC. *See* Order re Motions 5-6, ECF
14 59 (dismissing FDCPA claim with prejudice).

15 Accordingly, IT IS HEREBY ORDERED THAT:

16 Plaintiff shall file his proposed Third Amended Complaint into the docket by **no later**
17 **than October 2, 2014**. Plaintiff shall make no changes to the TAC other than to remove the "20th
18 Cause of Action." Plaintiff's TAC shall stand as the operative complaint, and the only claims
19 before the Court shall be the ones set forth in the TAC.

20 Because Plaintiff has been granted leave to amend his complaint, Defendants' motions
21 regarding the SAC (ECF 97, 98) are DENIED as moot.

22 **IT IS SO ORDERED.**

23 Dated: September 15, 2014

24 
25 BETH LABSON FREEMAN
26 United States District Judge

27 _____
28 ¹ The Court notes that the currently operative SAC contains only two claims. *See* Second Amended Complaint, ECF 88.