

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
SOUTHERN DISTRICT OF CALIFORNIA**

EDUARDO LARIN, on behalf of himself and
all others similarly situated,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.

CASE NO. 09cv1062 DMS (RBB)

**ORDER GRANTING PLAINTIFF’S
MOTION FOR CLARIFICATION**

[Docket No. 24]

This case comes before the Court on Plaintiff’s motion for clarification. Plaintiff seeks to clarify whether he may file a Second Amended Complaint in light of this Court’s September 30, 2009 Order granting Defendants’ motion to dismiss Plaintiff’s First Amended Complaint without prejudice. Defendant has filed an opposition to the motion, and Plaintiff has filed a reply.

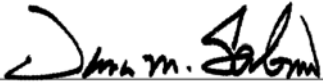
In granting Defendant’s motion to dismiss Plaintiff’s First Amended Complaint, it was unclear to the Court whether Plaintiff would be able to state a claim that was not preempted by the EFAA or the NBA. Therefore, the Court granted the motion to dismiss without prejudice, leaving Plaintiff the opportunity to conduct that analysis based on the underlying facts and the Court’s discussion of the preemption issues. Plaintiff’s former counsel did not file a Second Amended Complaint or request clarification of the Court’s Order to determine whether he could do so. Plaintiff, now appearing *in pro per*, seeks that relief in the present motion.

///

1 As indicated above, the Court's September 30, 2009 Order contemplated the filing of a Second
2 Amended Complaint, provided that it cured the pleading deficiencies set out in that Order. In other
3 words, Plaintiff would have to state a claim based on the same underlying facts that is not preempted
4 by the EFAA or the NBA. Plaintiff claims to have done so in his proposed Second Amended Class
5 Action Complaint, but as Defendant points out, a plaintiff appearing *in pro per* is prohibited from
6 filing a case on behalf of anyone other himself. See *McShane v. United States*, 366 F.2d 286, 288 (9th
7 Cir. 1966) (stating plaintiff appearing *in pro per* "has no authority to appear as an attorney for others
8 than himself.") Accordingly, although the Court grants Plaintiff's motion for clarification as discussed
9 above, it declines to accept the Second Amended Complaint for filing in this case. Plaintiff remains
10 free to file a Second Amended Complaint on his own behalf, or to file a Second Amended Class
11 Action Complaint with the assistance of counsel.

12 **IT IS SO ORDERED.**

13 DATED: January 4, 2010



14
15 HON. DANA M. SABRAW
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28