

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9

Jonathan C. Bertanelli,

)

No. CV-11-1343-PHX-PGR (LOA)

10

Plaintiff,

)

ORDER

11

vs.

)

12

Charles L. Ryan, et al.,

)

13

Defendants.

)

14

15

This matter is before the Court on Plaintiff’s Motion for Leave to Leave to File First

16

Amended Complaint, doc. 38. Defendant Ryan opposes the motion, doc. 40. Federal Rule of

17

Civil Procedure 15 governs the amendment of complaints. Because Plaintiff’s motion for leave

18

to amend was filed more than 21 days after Defendant filed a motion to dismiss pursuant to

19

Fed.R.Civ.P. 12(b), and Defendant opposes amendment, Plaintiff needs leave to amend his

20

complaint. Fed.R.Civ.P. 15(a)(1)(B); docs. 28. Although Rule 15(a)(2) provides that leave to

21

amend should be freely given “when justice so requires,” Plaintiff must also comply with Local

22

Rule of Civil Procedure Local 15.1. As the Court has previously advised Plaintiff, Local Rule

23

15.1 provides, in relevant part, that:

24

A party who moves for leave to amend a pleading . . . must attach a copy of the proposed amended pleading as an exhibit to the motion . . . which must indicate in what respect it differs from the pleading which it amends, by bracketing or striking through the text to be deleted and underlining the text to be added. The proposed amended pleading is not to incorporate by reference any part of the preceding pleading, including exhibits.

28

LRCiv 15.1(a).

1 In his motion, Plaintiff copies portions of his original complaint and uses brackets
2 to identify it as text that is deleted from the original complaint. (Doc. 38 at 2-3) Plaintiff
3 further explains that to identify text that is added to the first amended complaint, his motion
4 contains such additional text which is underlined. (Doc. 38 at 3-5) Although Plaintiff's motion
5 to amend identifies text to be added or deleted by way of amendment, his proposed First
6 Amended Complaint does not which hinders the Court's ability to compare the original and
7 proposed amended complaint. (Doc. 38, attachment) Although Plaintiff has attempted to comply
8 with Local Rule of Civil Procedure 15.1, his attempt falls short. As Defendant notes, the
9 manner in which Plaintiff presents his proposed amendments makes it difficult to compare the
10 original and amended complaint. In view of Plaintiff's failure to comply with Local Rule of
11 Civil Procedure 15.1(a), the Court will deny his motion for leave to amend. If Plaintiff seeks
12 to amend his complaint, he must submit a "proposed amended pleading as an exhibit to the
13 motion. . . which must indicate in what respect it differs from the pleading which it amends,
14 by bracketing or striking through the text to be deleted and underlining the text to be added."
15 LRCiv 15.1(a). It is not sufficient to identify the added or deleted text in a supporting motion,
16 rather the changes must be indicated on the proposed amended pleading itself.

17 Thus, the Original Complaint stands, as does Defendant's Motion to Dismiss that
18 Complaint, doc. 28. Accordingly, the Court will deny Plaintiff's Motion for Court Order Not
19 to Respond to Defendants' Motion to Dismiss. (Doc. 39) The Court has previously extended
20 the deadline for Plaintiff to respond to the motion to dismiss to May 11, 2012. In an abundance
21 of caution, the Court will extend the deadline for Plaintiff to respond to the Motion to Dismiss
22 to June 4, 2012. In view of the denial of Plaintiff's motion for leave to amend, his related
23 "Motion in Opposition to the Court's anticipated pre-screening order Dismissing Plaintiff's
24 Policy Claim," doc. 42, is moot and will be denied as such.

25 Accordingly,

26 **IT IS ORDERED** that Plaintiff's Motion for Leave to File First Amended
27 Complaint, doc. 38, is **DENIED** without prejudice.

