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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

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9 Phillip Seldon,

10 Plaintiff,

11 v.

12 Edward Magedson a/k/a Ed Magedson;  
13 et al.,

14 Defendants.

No. CV-13-0072 PHX DGC

**ORDER**

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16 Defendant Xcentric Ventures LLC (“Xcentric”) has filed a motion to strike the  
17 second amended complaint. Doc. 23. *Pro se* Plaintiff filed a response to the motion  
18 (Doc. 24), and a cross-motion seeking in the alternative leave of Court to file a second  
19 amended complaint (Doc. 25). Defendants Xcentric and Edward Magedson filed a  
20 response to Plaintiff’s cross-motion. Doc. 26. No party has requested oral argument.  
21 For the reasons discussed below, the Court will grant the motion to strike and deny  
22 Plaintiff’s cross-motion.

23 Plaintiff filed a complaint on January 1, 2013. Doc. 1. On March 13, 2012,  
24 Plaintiff filed a first amended complaint. Doc. 11. The Court’s Case Management Order,  
25 entered May 17, 2013, established a deadline for amending pleadings and adding parties:

26 2. Deadline for Joining Parties, Amending Pleadings, and Filing  
27 Supplemental Pleadings. The deadline for joining parties, amending  
28 pleadings, and filing supplemental pleadings is **30 days** from the date of  
this Order.

1 Doc. 18 at 1. The 30-day deadline expired on June 17, 2013. *See* Fed. R. Civ. P. 6(a)(1).  
2 Plaintiff filed a second amended complaint on that day. Doc. 22.

3 Defendant Xcentric’s motion argues that the Court should strike the second  
4 amended complaint because Plaintiff filed it without “the opposing party’s written  
5 consent or the court’s leave” as required by Rule 15(a)(2) of the Federal Rules of Civil  
6 Procedure. Doc. 23 at 1. In response, Plaintiff argues that the case management order  
7 “made no mention that permission had to be obtained in order to make the amendment,”  
8 and that Plaintiff “previously amended [his] complaint with no objection or consent on  
9 the part of [Defendant Xcentric’s counsel] and as such had no knowledge that court  
10 permission was required.” Doc. 24 at 1.

11 *Pro se* litigants are bound by the rules of civil procedure. *See King v. Atiyeh*, 814  
12 F.2d 565, 567 (9th Cir. 1987) (“*Pro se* litigants must follow the same rules of procedure  
13 that govern other litigants.”). The Court’s order setting the Rule 16 case management  
14 conference so advised Plaintiff. *See* Doc. 14 at 6 (“The parties are expected to comply  
15 fully with the Federal and Local Rules of Civil Procedure[.]”). In addition, during the  
16 Case Management Conference held on May 9, 2013 (Doc. 17), the Court advised Plaintiff  
17 that he should obtain a current copy of the Federal Rules of Civil Procedure and follow  
18 all court orders. As a result, Plaintiff’s assertion that he lacked knowledge of  
19 Rule 15(a)’s requirements is not well taken. Because Plaintiff filed the second amended  
20 complaint in violation of Rule 15(a)(2), the Court will grant Defendant’s motion to strike.

21 In his cross-motion, Plaintiff argues that he had no knowledge of Rule 15(a)(2),  
22 that the second amended complaint does not prejudice Defendants, and that it asserts  
23 valid claims. Doc. 25 at 2-3. In response, Defendants submit that the Court should deny  
24 Plaintiff leave for the following reasons: (1) Plaintiff has not demonstrated good cause to  
25 modify the case management order as required by Rule 16(b)(4); (2) Plaintiff did not file  
26 a redline version of the second amended complaint indicating how it differs from the first  
27 amended complaint as required by Local Rule 15.1(a); and (3) the substance of Plaintiff’s  
28 amendment is futile. Doc. 26 at 2.

1           Deadlines established in case management orders may “be modified only for good  
2 cause[.]” Fed. R. Civ. P. 16(b)(4); *see Johnson v. Mammoth Recreations, Inc.*, 975 F.2d  
3 604, 608 (9th Cir. 1992) (“The scheduling order ‘controls the subsequent course of the  
4 action’ unless modified by the court.”) (quoting Fed. R. Civ. P. 16(a)). Good cause exists  
5 when a deadline “cannot reasonably be met despite the diligence of the party seeking the  
6 amendment.” *Johnson*, 975 F.2d at 609; *see also Coleman v. Quaker Oats Co.*, 232 F.3d  
7 1271, 1294 (9th Cir. 2000). Plaintiff does not argue diligence or good cause. Rather, he  
8 argues that the amendment is valid and will not cause prejudice. These arguments are not  
9 relevant. In determining whether to extend a Rule 16 deadline, the focus is on the  
10 diligence of the moving party, not the absence of prejudice. “Although the existence or  
11 degree of prejudice to the party opposing the modification might supply additional  
12 reasons to deny a motion, the focus of the inquiry is upon the moving party’s reasons for  
13 seeking modification. If that party was not diligent, the inquiry should end.” *Johnson*,  
14 975 F.2d at 609 (citation omitted). Plaintiff does not argue that he was diligent, and the  
15 Court concludes that the amendment deadline could have been met through reasonable  
16 diligence. The Court therefore will deny the cross-motion for leave to amend.

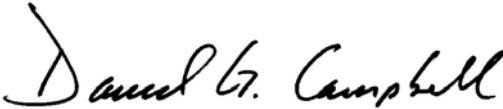
17           Plaintiff again is advised that although he is proceeding *pro se*, he must become  
18 familiar with and follow the Federal Rules of Civil Procedure and the Local Rules. *See*  
19 *King*, 814 F.2d at 567; *Carter v. Comm’r of Internal Revenue*, 784 F.2d 1006, 1008 (9th  
20 Cir. 1986) (“Although *pro se*, [plaintiff] is expected to abide by the rules of the court in  
21 which he litigates.”). The Federal Rules of Civil Procedure are available at the following  
22 Internet website: [www.law.cornell.edu/rules/frcp/](http://www.law.cornell.edu/rules/frcp/). A copy of the Court’s Local Rules of  
23 Civil Procedure may be obtained in the Clerk’s Office and are available online at the  
24 Court’s Internet website: [www.azd.uscourts.gov](http://www.azd.uscourts.gov) (follow hyperlink titled “Rules, General  
25 Orders & Forms”). Plaintiff is further advised that if he fails to prosecute this action or  
26 comply with the rules or any Court order, the Court may dismiss the action with prejudice  
27 pursuant to Rule 41(b). *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992).

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**IT IS ORDERED:**

1. Defendant’s motion to strike the second amended complaint (Doc. 23) is **granted**.
2. Plaintiff’s motion seeking leave to file second amended complaint (Doc. 25) is **denied**.

Dated this 19th day of September, 2013.



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David G. Campbell  
United States District Judge