

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

14 Before the Court is Plaintiff's Second Amended Complaint (Doc. 18). The pleading
15 will be stricken as improperly filed.

Defendant O'Brien filed a Motion to Dismiss (Doc. 16) on October 13, 2010 pursuant to Rule 12(b) of the Federal Rules of Civil Procedure for failure to exhaust prison administrative remedies as required by 42 U.S.C. § 1997e(a). Plaintiff subsequently filed a Second Amended Complaint (Doc. 18) on October 15, 2010.

Federal Rule of Civil Procedure 15 entitles a party to amend its pleading “once as a matter of course” within 21 days after service, or “if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1)(A)-(B). Further amendment is permissible “only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2).

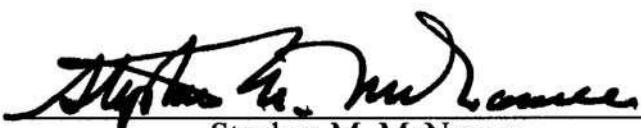
1 Plaintiff filed his First Amended Complaint (Doc. 10) on August 31, 2009. Plaintiff
2 then filed a Second Amended Complaint (Doc. 18) without leave from the Court or
3 Defendant's permission. Plaintiff violated Rule 15 by failing to secure the Court's leave or
4 Defendant's permission before filing his Second Amended Complaint.

5 **IT IS ORDERED** that Plaintiff's Second Amended Complaint (Doc. 18) is
6 **STRICKEN** as improperly filed. Plaintiff must comply with Federal Rule of Civil
7 Procedure 15(a) to amend his complaint.

8 **IT IS FURTHER ORDERED** that Plaintiff must file a response to Defendant's
9 Motion to Dismiss, together with copies of grievances, sworn declarations or other
10 admissible evidence, no later than **November 26, 2010**. The response and its supporting
11 memorandum shall not exceed seventeen (17) pages, exclusive of attachments. The previous
12 November 12, 2010 deadline for Plaintiff's response set by the Court in its October 15, 2010
13 order (Doc. 17) is hereby vacated.

14 **IT IS FURTHER ORDERED** that Defendant may file a reply no later than
15 **December 6, 2010**. The reply and its supporting memorandum shall not exceed eleven (11)
16 pages, exclusive of attachments. The previous November 22, 2010 deadline for Defendant's
17 reply set by the Court in its October 15, 2010 order (Doc. 17) is hereby vacated.

18 DATED this 9th day of November, 2010.

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21 Stephen M. McNamee
22 United States District Judge
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