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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION**

LATWAH McELROY,  
CDCR #P-71922,

Plaintiff,

vs.

ROY COX, et al.,

Defendants.

Civil No. 08-1221 JTM (AJB)

**ORDER STRIKING LODGED FIRST  
AMENDED COMPLAINT FROM  
THE DOCKET**

**I.**

**PROCEDURAL HISTORY**

On August 19, 2008, Plaintiff, a state inmate currently incarcerated at the California State Prison located in Sacramento, California and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a) to commence a civil action; instead, he filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

1 The Court granted Plaintiff's Motion to Proceed *IFP* on August 21, 2008 [Doc.  
2 No. 4]. On November 26, 2008, this matter was reassigned to District Judge Jeffrey T.  
3 Miller for all further proceedings [Doc. No. 7]. Defendants were served and filed a  
4 Motion to Dismiss pursuant to FED.R.CIV.P. 12(b) which was denied by Court.  
5 Defendants filed their Answer on September 1, 2009 [Doc. No. 21]. On November 25,  
6 2009, Plaintiff "lodged" a First Amended Complaint with the Court [Doc. No. 28].

7 **II.**

8 **DISCUSSION**

9 Federal Rules of Civil Procedure 15(a)(1) provides, in part, that a "party may  
10 amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B)  
11 if the pleading is one to which a responsive pleading is required, 21 days after service  
12 of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or  
13 (f), whichever is earlier." FED.R.CIV.P. 15(a)(1).

14 Here, Defendants filed their Answer almost three months prior to Plaintiff's  
15 attempt to file an Amended Complaint. Thus, Plaintiff must seek leave of Court if he  
16 wishes to file a First Amended Complaint. *See* FED.R.CIV.P. 15(a)(2).


17 **III.**

18 **CONCLUSION AND ORDER**

19 Good cause appearing, **IT IS HEREBY ORDERED** that:

20 The Clerk of Court shall strike Plaintiff's "lodged" First Amended Complaint from  
21 the Court's docket [Doc. No. 28].

22 DATED: December 4, 2009

23   
24 Hon. Jeffrey T. Miller  
United States District Judge