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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 ADVANCED BUILDING &
10 FABRICATION, INC. a
California corporation;
11 ROBERT HONAN, an individual,

12 Plaintiffs,

13 v.

14 CALIFORNIA HIGHWAY PATROL,
JOHN WILSON, an individual,
15 CRUTIS J. AYERS, an
individual, and DOES 1 to 20,
16 inclusive,

17 Defendants.
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No. 2:13-CV-02380-GEB-CKD

**ORDER STRIKING PLAINTIFFS'
SECOND AMENDED COMPLAINT**

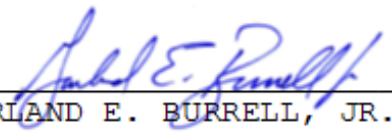
19 Plaintiffs filed an action on September 27, 2013
20 against Defendants in the Superior Court of the State of
21 California, County of Sacramento. Plaintiffs filed a First
22 Amended Complaint ("FAC") in the same court and Defendants
23 removed the FAC to federal court on November 15, 2013.
24 Subsequently, Defendants filed a motion to dismiss the FAC under
25 Federal Rule of Civil Procedure ("Rule") 12(b)(6), and twenty-one
26 days after the dismissal motion was filed, Plaintiffs filed a
27 Second Amended Complaint ("SAC").

28 However, Plaintiffs have not shown they were authorized

1 to file a SAC. Rule 15(a) governs the amendment of pleadings
2 before trial and states in part, "[a] party may amend its
3 pleading once as a matter of course within . . . 21 days after
4 service of a motion under Rule 12(b). . . . In all other cases, a
5 party may amend its pleading only with the opposing party's
6 written consent or the court's leave."

7 "When a state court action is removed to federal court,
8 the removal is treated as if the original action had been
9 commenced in federal court." Schnabel v. Lui, 302 F.3d 1023, 1037
10 (9th Cir. 2002); see also Butner v. Neustadter, 324 F.2d 783, 785
11 (9th Cir. 1963) (holding that after removal, a district court
12 "takes the case as it finds it" and "treats everything that
13 occurred in the state court as if it had taken place in federal
14 court."). "Because [Plaintiffs] filed [their FAC] . . . in state
15 court prior to removal to this court, [they] already amended
16 [their] pleading once as a matter of course. Thus, [they] could
17 not properly file the [SAC] without first obtaining leave of the
18 court [or the opposing party's written consent]." Manzano v.
19 Metlife Bank N.A., No. CIV 2:11-651-WBS-DAD, 2011 WL 2080249, at
20 *3 (E.D. Cal. May 25, 2011). Therefore, Plaintiffs' SAC is
21 stricken for failure to comply with Rule 15(a).

22 Dated: June 5, 2015

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25 GARIAND E. BURRELL, JR.
26 Senior United States District Judge
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