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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CASEY L. HACKER,

Plaintiff,

v.

MICHAEL R. HACKER,

Defendant.

No. 2:15-cv-00621-TLN-AC

ORDER

This matter is before the undersigned pursuant to Local Rule 302(c)(21). Presently before the court is plaintiff's first amended complaint, ECF No. 7, which he filed without defendant's consent or leave of the court.

Federal Rule of Civil Procedure 15(a) provides, in relevant part:

(1) A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it; or

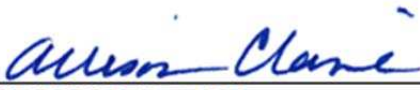
(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Rule 15(a) therefore provides for the filing of an amended complaint once as a matter of right within 21 days of service of a Rule 12(b)(6) motion to dismiss. When a party can no longer

1 amend a pleading as a matter of right the party must either petition the court for leave to amend or  
2 obtain consent from the adverse parties. Fed. R. Civ. Pro. 15(a). “If an amended pleading can  
3 not be made as of right and is filed without leave of court or consent of the opposing party, the  
4 amended pleading is a nullity and without legal effect.” Primerica Life Ins. Co. v. Davila, No.  
5 1:10-CV-1924 AWI SMS, 2011 WL 643395, at \*2 (E.D. Cal. Feb. 17, 2011) (citing U.S. ex rel.  
6 Mathews v. HealthSouth Corp., 332 F.3d 293, 296 (5th Cir. 2003)).

7 Plaintiff filed his first amended complaint on July 20, 2015, more than 21 days after  
8 defendant filed his June 11, 2015, motion to dismiss. Accordingly, plaintiff was required to  
9 obtain either defendant’s consent or leave of the court. Because plaintiff did neither, his first  
10 amended complaint is without legal effect and THE COURT HEREBY STRIKES it. The court  
11 also notes that it does not consider plaintiff’s first amended complaint to be a response to its July  
12 20, 2015, order to show cause. ECF No. 6. Plaintiff **must respond to the court’s July 20, 2015,**  
13 **order to show cause by August 8, 2015.**

14 DATED: July 22, 2015

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16 ALLISON CLAIRE  
17 UNITED STATES MAGISTRATE JUDGE  
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