UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

TEODORO G. RUBANG,

Plaintiff,

v.

NAF-HUMAN RESOURCES, et al.,

Defendants.

No. 2:15-cv-02195-KJM-AC

ORDER

This matter is before the undersigned pursuant to Local Rule 302(c)(21). On January 21, 2016, the court issued findings and recommendations that recommended defendants' November 30, 2015, motion to dismiss be granted with leave to amend. ECF No. 9. Those Findings and Recommendations remain pending. On February 1, 2016, plaintiff filed an FAC. ECF No. 10.

Rule 15(a) allows parties to amend their pleadings "once as a matter of course" within 21 days after serving it, or 21 days after service of a responsive pleading or motion. "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave." Id. Plaintiff's FAC was filed (1) more than 21 days after his original complaint was served and defendants' motion to dismiss was filed, and (2) without the court's leave or defendants' written consent. In addition, plaintiff's FAC was filed before the undersigned's recommendation to grant defendants' motion to dismiss with leave to amend could be ruled on by the presiding district judge. Accordingly, the court finds that plaintiff's FAC was filed in

violation of Rule 15(a) and this court's instructions. Plaintiff's FAC will be therefore be stricken.

Plaintiff is informed that when the magistrate judge issues Findings and Recommendations, the district judge makes the final ruling. A recommendation for leave to amend is not an order granting leave to amend. Plaintiff may re-file his FAC only when, and if, the presiding district judge adopts the undersigned's recommendation to dismiss his complaint with leave to amend.

In accordance with the foregoing, THE COURT HEREBY ORDERS that:

1. Plaintiff's February 1, 2016, FAC (ECF No. 10) is hereby STRICKEN; and

2. Defendants' motion to strike (ECF No. 11) is DENIED as moot.

DATED: February 11, 2016

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE