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

No. 2:16-CV-2073-GEB-CMK

ORDER

SISKIYOU COUNTY, et al.,

Defendants.

Plaintiffs,

ANTHONY J. BATOR, et al.,

VS.

Plaintiffs, who are proceeding pro se, bring this civil action. Plaintiffs have filed a first amended complaint (see Doc. 24) and defendants have filed objections thereto (see Docs. 27 and 29). Also before the court is plaintiffs' "Notice of Non Consent Pursuant to Rule # 73 and Motion to Strike Pleading for Failure to Recognize Non Consent" (Doc. 26).

The Federal Rules of Civil Procedure provide that a party may amend his or her pleading once as a matter of course within 21 days of serving the pleading or, if the pleading is one to which a responsive pleading is required, within 21 days after service of the responsive pleading, see Fed. R. Civ. P. 15(a)(1)(A), or within 21 days after service of a motion under Rule 12(b), (e), or (f) of the rules, whichever time is earlier, see Fed. R. Civ. P. 15(a)(1)(B). In all other situations, a party's pleadings may only be amended upon leave of court or stipulation of all the parties. See Fed. R. Civ. P. 15(a)(2).

Here, plaintiffs filed their original complaint on August 30, 2016. A timely motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b) was served and filed on

December 7, 2016. Plaintiffs filed their first amended complaint on January 31, 2017. Plaintiffs obtained neither leave of court nor a stipulation from all defendants before doing so. Because plaintiffs' first amended complaint was filed more than 21 days after service of a motion to dismiss under Rule 12(b), and without prior leave of court or stipulation of all the parties, the filing is improper and will be stricken.

Turning to plaintiffs' filing, plaintiffs argue that all matters in this case must be heard by a District Judge because the parties have not consented to Magistrate Judge jurisdiction. Plaintiffs seek an order striking motions filed by defendants. Plaintiffs misread the applicable rules. In cases where the parties have not consented to Magistrate Judge jurisdiction for all purposes, including entry of final judgment, the rules nonetheless refer specific matters to the assigned Magistrate Judge for initial determination and recommendation to the assigned District Judge. See Fed. R. Civ. P. 72(b); see also E. Dist. Cal. Local Rule 302(c). In particular, Local Rule 302(c) specifically refers all matters – including dispositive motions – in pro se cases to the assigned Magistrate Judge. Plaintiffs' request to strike defendants' motions will be denied.

Accordingly, IT IS HEREBY ORDERED that:

- 1. Defendants' objections are sustained;
- 2. The first amended complaint filed on January 31, 2017 (Doc. 24) is stricken; and
 - 3. Plaintiffs' motion to strike (Doc. 26) is denied.

DATED: February 17, 2017

CRAIG M. KELLISON

UNITED STATES MAGISTRATE JUDGE

A second group of defendants filed a motion to remand on December 13, 2016.