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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GLENN EDWIN CLAY,

Plaintiff,

v.

Carolyn W. Colvin, Acting
Commissioner of Social Security,

Defendant.

Case No. 14-cv-02893-BAS(BLM)

**ORDER DENYING JOINT
MOTION FOR THE COURT TO
SET THE TIME FOR
DEFENDANT’S ANSWER TO
PLAINTIFF’S AMENDED
COMPLAINT**

[ECF No. 20]

Presently before the Court is a joint motion to set the time for Defendant to respond to Plaintiff’s First Amended Complaint. (ECF No. 20.) Following the Court’s Order reopening this case, Plaintiff served his original Complaint on Defendant on April 1, 2016. (ECF No. 20 at 2:7–9.) Plaintiff subsequently retained counsel and filed a First Amended Complaint on May 11, 2016. (ECF No. 17.) Because Plaintiff amended his pleading more than twenty-one days after his initial Complaint was filed and did so without “Defendant’s written consent or the Court’s leave,” the parties submit that Plaintiff’s First Amended Complaint is untimely. They

1 request that the Court nevertheless allow the parties to proceed by setting June 3,
2 2016, as the deadline for Defendant to respond to Plaintiff’s amended pleading.

3 Federal Rule of Civil Procedure 15 governs amendments to pleadings. Prior to
4 trial, there are two types of amendments: (i) amendments made as a matter of course
5 and (ii) other amendments. Fed. R. Civ. P. 15(a)(1)–(2). Rule 15 defines the first
6 category of amendments as follows:

7 (1) ***Amending as a Matter of Course.*** A party may amend its pleading
8 once as a matter of course within:

9 (A) 21 days after serving it, or

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

14 *Id.* Unlike other amendments, amendments made as a matter of course do not require
15 “the opposing party’s written consent or the court’s leave.” *Id.*

16 Here, Plaintiff’s First Amended Complaint is a type of pleading “to which a
17 responsive pleading is required.” *See* Fed. R. Civ. P. 15(a)(1)(B). Consequently,
18 Plaintiff had the right to amend his pleading “once as a matter of course within . . .
19 21 days after service of a responsive pleading or 21 days after service of a motion
20 under Rule 12(b), (e), or (f), whichever is earlier.” *See id.*; *see also Villery v. District*
21 *of Columbia*, 277 F.R.D. 218, 219 (D.D.C. 2011) (“Therefore, under Rule
22 15(a)(1)(B), a party has an absolute right to amend its complaint at any time from the
23 moment the complaint is filed until 21 days after the earlier of the filing of a
24 responsive pleading or a motion under Rule 12(b), (e), or (f).”). Because no
25 responsive pleading or applicable Rule 12 motion had been filed in the reopened case
26 prior to Plaintiff’s amendment, the twenty-one day period for Plaintiff to amend his
27 pleading had not yet started to accrue. Thus, Plaintiff’s First Amended Complaint is
28 timely, and there is not good cause to grant the parties’ joint motion.

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Based on the foregoing, the Court **DENIES** the parties' joint motion to set the time for Defendant to respond to Plaintiff's First Amended Complaint. Defendant may respond to this pleading in accordance with the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: May 27, 2016


Hon. Cynthia Bashant
United States District Judge