

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Magistrate Judge Kathleen M. Tafoya**

Civil Action No. 08-cv-00275-ZLW-KMT

JOHN NASIOUS,

Plaintiff,

v.

CITY AND COUNTY OF DENVER - Denver Sheriffs [sic] Department,  
SHERIFF STRONG, Denver Sheriffs [sic] Department, in his official and individual capacity,  
NURSE ROSIE PAGLIANO - Denver Sheriffs [sic] Department, in her official and individual  
capacity,

Defendants.

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**ORDER**

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This matter is before the court on the “Motion to Strike Second Amended Prisoner Complaint filed February 18, 2009 (No. 48)” (Doc. No. 49, filed February 24, 2009). Plaintiff filed an amended prisoner complaint asserting claims against additional defendants. (Doc. No. 48.)

The record in this case shows Plaintiff filed his original complaint on February 8, 2008 (Doc. No. 2), and his first amended complaint on March 25, 2008 (Doc. No. 9). Defendants the City and County of Denver and Strong filed their Answer to the first amended complaint on May 27, 2008. (Doc. No. 26.)

Rule 15 states a party may amend its pleadings once as a matter of course before being served with a responsive pleading. Fed. R. Civ. P. 15(a)(1)(A). In all other cases, a party may

amend its pleadings only with the opposing party's written consent or the court's written leave. Fed. R. Civ. P. 15(a)(2). Defendant Pagliano states she did not give her consent to amend the complaint. (Mot. ¶ 4.) In addition, there is no indication the other defendants in this case gave their written consent for the filing of the amended complaint. Moreover, the court, in the scheduling conference on December 18, 2008, set a deadline by which an amended complaint could be filed with leave of the court. (Doc. No. 37.) However, Plaintiff did not seek leave of the court before filing it his amended complaint. Therefore, it is

ORDERED that:

1. The "Motion to Strike Second Amended Prisoner Complaint filed February 18, 2009 (No. 48)" (Doc. No. 49) is GRANTED. Plaintiff's Amended Complaint filed February 18, 2009 (Doc. No. 48) is STRICKEN;
2. The "Motion to Notify Court that Nasious Needs Assistance" (Doc. No. 46) filed February 17, 2009, is DENIED as moot;
3. The "Motion to Strike Defendant Nurse Rosie Pagliano's Motion to Dismiss and Response to Second Amended Complaint" (Doc. No. 54) is DENIED. The motion will be considered a response to the pending motion to dismiss (Doc. No. 42), and the Clerk of Court shall make a docket annotation to reflect same.

Dated this 9th day of March, 2009.

**BY THE COURT:**

A handwritten signature in black ink, appearing to read "Kathleen M. Tafoya". The signature is written in a cursive style with a large initial 'K' and 'T'.

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Kathleen M. Tafoya  
United States Magistrate Judge