

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

Civil Action No. 13-cv-00328-KMT

CHARLES M. LYONS,

Plaintiff,

v.

SOUTHWEST MEMORIAL HOSPITAL,

Defendant.

ORDER

This matter is before the court on “Plaintiff’s First Amended Complaint Pursuant to Fed. R. Civ. P. 15(a)(2).” (Doc. No. 40, filed September 19, 2013 [FAC].) As background, on September 5, 2013, the court struck Plaintiff’s previously-filed First Amended Complaint (Doc. No. 37) because it was filed after the Fed. R. Civ. P. 15(a)(1) deadline for filing an amended pleading as a matter of course and because Plaintiff had not obtained Defendant’s consent or the court’s leave pursuant to Fed. R. Civ. P. 15(a)(2). (*See* Minute Order, Doc. No. 38).

In the present First Amended Complaint, Plaintiff acknowledges that he must obtain leave of court to file an amended pleading at this time, but nevertheless argues that the court granted such leave by establishing in the Scheduling Order (Doc. No. 36) a September 3, 2013 deadline for joinder of parties and amendment of the pleadings. (*See* FAC at 1.)

Plaintiff misunderstands the import of the Scheduling Order's deadline for amendment of pleadings. It does not amount to leave of court to amend the pleadings at any time prior to the expiration of that deadline. Instead, the deadline for amendment of pleadings establishes a presumptive deadline by which the parties must seek leave to amend the pleadings. After that deadline passes, a party must demonstrate good cause to extend the Scheduling Order's deadline for amending pleadings, in addition to satisfying Rule 15(a)(2)'s requirements. *See, e.g., Cartel Asset Mgmt. v. Ocwen Fin. Corp.*, Case No. 01-cv-01644-REB-CBS, 2010 WL 3522409, at *2 (D. Colo. Aug. 11, 2010). Therefore, at this juncture, Plaintiff must obtain either leave of court, by way of a motion to amend the complaint, or obtain Defendant's consent, before amending his complaint.

Therefore, for the foregoing reasons, it is

ORDERED that "Plaintiff's First Amended Complaint Pursuant to Fed. R. Civ. P. 15(a)(2)" (Doc. No. 40) is STRICKEN.

Dated this 23rd day of September, 2013.

BY THE COURT:



Kathleen M Tafoya
United States Magistrate Judge