

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Magistrate Judge Boyd N. Boland

Civil Action No. 14-cv-00932-BNB

D. MICHAEL CLAYTON,

Plaintiff,

v.

THE SAMSONITE EMPLOYEES RETIREMENT INCOME PLAN, f/k/a The Samsonite Retirement Income Plan, and SAMSONITE LLC, as Plan Administrator of The Samsonite Employees Retirement Income Plan,

Defendants.

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**ORDER**

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This matter arises on:

(1) The parties' **Stipulation to File Second Amended Complaint and for Extension of Time to Respond** [Doc. #19, filed 06/02/2014]; and

(2) The plaintiff's **Notice of Filing Second Amended Complaint** [Doc. #20, filed 06/03/2014].

The plaintiff filed his initial Complaint on April 1, 2014 [Doc. #1]. Because the plaintiff is proceeding *pro se*, he was ordered to file an amended complaint on the court's form. He filed the Amended Complaint on April 4, 2014 [Doc. #6]. The defendants filed waivers of service indicating that the plaintiff served requests for waivers on April 2, 2014 [Docs. ## 12 and 13].

The parties state that they stipulate to the following: (1) the plaintiff will file a second amended complaint on or before June 5, 2014; (2) "any and all exhibits to the Amended Complaint may be incorporated by reference in Plaintiff's Second Amended Complaint; (3)

“there is no need for Defendants to answer the Amended Complaint”; and (4) “Defendants shall answer or otherwise respond to Plaintiff’s Second Amended Complaint within seven days of the date the Second Amended Complaint is filed.” They request that the court “enter an order (1) granting Plaintiff leave to file a Second Amended Complaint in accordance with D.C.COLO.LCivR 15.1(a) on or before June 5, 2014, which Defendants must answer or otherwise respond to within seven days of the date the Second Amended Complaint is filed, and (2) ordering that Defendants need not answer the Amended Complaint.”

Rule 15, Fed. R. Civ. P. provides that “[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1). “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2).

The plaintiff does not meet the requirements of Rule 15(a)(1). However, because he has written consent to amend from the defendants, he may file a second amended complaint under Rule 15(a)(2). The defendants’ response to the amended pleading “must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.” Fed. R. Civ. P. 15(a)(3). The defendants’ stipulation to respond within seven days complies with Rule 15(a)(3).

The parties may not stipulate that the plaintiff can incorporate by reference exhibits into his second amended complaint, nor can they stipulate that a response to an extant complaint is unnecessary. Those issues must be presented to the court by motion. The parties’ failure to

properly present the issues to the court notwithstanding,

IT IS ORDERED:

(1) The Clerk of the Court is directed to accept the Second Amended Complaint for filing; and

(2) All future papers filed with the court shall be in proper form and shall comply with the Federal Rules of Civil Procedure and the local rules of this court.

Dated June 16, 2014.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge