

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ROBERT E. TARDIF, JR., as Trustee
for Jason Yerk,

Plaintiff,

vs.

Case No. 2:09-cv-537-FtM-29SPC

PEOPLE for the ETHICAL TREATMENT of
ANIMALS, a Virginia not-for-profit
corporation,

Defendant.

OPINION AND ORDER

This matter comes before the Court on Plaintiff's Motion for Relief From Scheduling Order and Motion for Leave to Amend Complaint to Assert Punitive Damages (Doc. #152) filed on July 15, 2011. Defendant's Response (Doc. #153) in opposition was filed on July 28, 2011. Also before the Court is Plaintiff's Motion to Strike Defendant's Pleadings for Fraud Upon the Court and/or Motion for Sanctions (Doc. #115), filed on April 8, 2011. Defendant's Response (Doc. #121) was filed on April 20, 2011.

Plaintiff's request for punitive damages could have, and should have, been alleged in his initial complaint. Cohen v. Office Depot, Inc., 184 F.3d 1292, 1297-1298 (11th Cir. 1999), vacated in part on other grounds, 204 F.3d 1069 (11th Cir. 2000). Plaintiff's request to do so now is untimely. No good cause has

been established, and undue prejudice will accrue to defendant at this late stage of the proceedings if the amendment is allowed.

Plaintiff's request for sanctions drew a factual response from defendant which included defendant's request for sanctions. The conduct of both sides during the course of this litigation has from time to time been disappointing. Striking pleadings and entering a default is clearly a severe sanction to be used only in extreme circumstances. That standard has not been satisfied in this case.

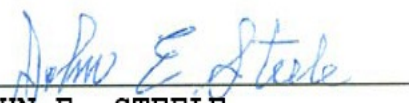
Accordingly, it is now

ORDERED:

1. Plaintiff's Motion for Relief From Scheduling Order and Motion for Leave to Amend Complaint to Assert Punitive Damages (Doc. #152) is **DENIED**.

2. Plaintiff's Motion to Strike Defendant's Pleadings for Fraud Upon the Court and/or Motion for Sanctions (Doc. #115) is **DENIED**.

DONE AND ORDERED at Fort Myers, Florida, this 20th day of October, 2011.



JOHN E. STEELE
United States District Judge

Copies:
Counsel of record