

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

KEVIN SMITH and JOANNA SMITH,

Plaintiffs,

v.

Case No. 8:23-cv-65-KKM-SPF

CORROSION CONTROL SPECIALISTS, INC., et al.,

Defendants.

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**ORDER**

On January 10, 2023, the District of New Jersey transferred this case to the Middle District of Florida based on Plaintiffs Kevin Smith and Joanna Smith's request. (Doc. 33; Doc. 34; Doc. 36.) That same day, the Court struck the Plaintiffs' amended complaint as an impermissible shotgun pleading and required Plaintiffs to file a second amended complaint by January 17, 2023. (Doc. 38.) Plaintiffs were warned that failure to comply by that date would result in dismissal. (*Id.*)

Instead of filing a second amended complaint as ordered, Plaintiffs' counsel submitted a letter to the Clerk's Office requesting an extension of 30 days. See Appendix A.<sup>1</sup> If counsel intended that letter to suffice as a motion, it did not. The Federal Rules of

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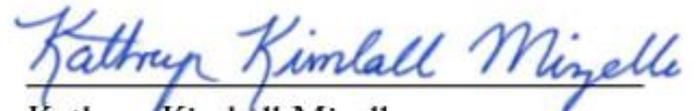
<sup>1</sup> Although dated January 13, 2023, the Clerk's Office received the letter around 8 p.m. on January 17, 2023.

Civil Procedure require that a motion have a caption that includes “the court’s name, a title, [and] a file number.” Fed. R. Civ. P. 10(a). Although the letter identified the case number and court, it lacks a title. Local Rule 3.01(j) also prohibits parties from using “a letter, email, or the like to request relief or to respond to a request for relief.” Thus, although timely, counsel’s letter does not comply with the Federal Rules of Civil Procedure or Local Rules and did not properly present a motion for extension of time to file a second amended complaint.

The above irregularities could have easily been remedied in a proper motion to extend the time and the relief sought granted had the Court not lost power to do so. When a court dismisses a complaint with leave to amend within a specified time, that order “becomes a final judgment if the deadline to amend expires without plaintiff amending its complaint or seeking an extension of time.” *Auto. Alignment & Body Serv., Inc. v. State Farm Mut. Auto. Ins. Co.*, 953 F.3d 707, 719 (11th Cir. 2020). Upon expiration of the deadline, “the district court loses all its prejudgment powers to grant any more extensions’ of time to amend the complaint.” *Id.* at 720. Thus “the only recourse for a plaintiff” is “to appeal,” to “move to alter or amend the judgment,” or to “move for relief from the final judgment.” *Id.* Of course, a plaintiff may also refile the action if the dismissal was without prejudice and is not otherwise barred by the statute of limitations.

Accordingly, the action is **DISMISSED without prejudice**. The Clerk is directed to **TERMINATE** any pending motions and deadlines, **ENTER** judgment in favor of the Defendants, and **CLOSE** this case.

**ORDERED** in Tampa, Florida, on January 18, 2023.

  
Kathryn Kimball Mizelle  
United States District Judge