

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**THOMAS BURRELL**

**PLAINTIFF**

**v.**

**CIVIL ACTION NO. 4:17CV170-DMB-RP**

**WAYNE CARLISLE, et al.**

**DEFENDANTS**

**ORDER GRANTING MOTION TO STRIKE SECOND AMENDED COMPLAINT**

Defendants have moved to strike plaintiff's Amended Complaint filed on July 30, 2018 (Docket 71) as plaintiff failed to seek leave of court prior to filing the amended complaint and specifically had been denied an extension of time to file a motion to amend (Docket 67). Docket 73. Plaintiff has not filed any response and the time for a response has elapsed.

Federal Rule of Civil Procedure 15(a) dictates that:

- (1) 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.
- (2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Plaintiff filed his Complaint on December 4, 2017 and an amended Complaint on January 11, 2018. Docket 1. Defendants answered on February 6, 2018 and February 14, 2018. Docket 4, 10. On July 2, 2018, plaintiff filed a motion for extension of time to file a second amended Complaint (Docket 61) and that motion was denied on July 18, 2018. Docket 67.

Without any consent from defendants or leave from the court, plaintiff filed what is entitled Complaint, but is in fact a Second Amended Complaint on July 30, 2018. Docket 71.

Because plaintiff did not comply with Federal Rule of Civil Procedure 15 prior to filing his Second Amended Complaint, defendants' Motion to Strike is GRANTED. Plaintiff's Amended Complaint (Docket 2) will remain the active Complaint.

SO ORDERED, this, the 13th day of September, 2018.

/s/ Roy Percy

UNITED STATES MAGISTRATE JUDGE