

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
DOCKET NO. 1:15-cv-00038-MOC-DLH

<b>BRADLEY DISNEY,</b>	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	ORDER
	)	
<b>NORTH AMERICAN ROOFING SERVICES,</b>	)	
<b>INC.; JOHN/JANE DOES,</b>	)	
	)	
Defendants.	)	

**THIS MATTER** is before the court on plaintiff's Response to the Court's Show Cause Order (#25). In that Response, counsel for plaintiff acknowledges his error, reflects consultation with opposing counsel, and seeks leave to amend the complaint to correct the errors noted by defendant in its Motion to Dismiss. Such Response reflects that counsel for defendant opposes the filing of an amended complaint.

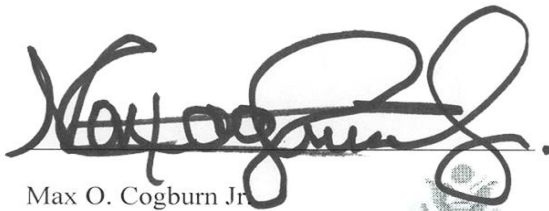
Review of the Motion to Dismiss and the improvidently filed Second Amended Complaint reveals that the errors brought to light by the Motion to Dismiss will not automatically be cured through re-pleading. While Rule 15 calls for liberal amendment, allowing amendment at this point would require defendant to file another Motion to Dismiss. The better course at this point is to consider as part of the Response why the First Amended Complaint is sufficient and, if not, whether such problems are curable. The court will strike the Second Amended Complaint as improvidently filed and deny plaintiff's request to file a second amended Complaint without prejudice. Finally, the court finds that plaintiff's error in not responding to the Motion to Dismiss

within the time allowed is one of legal neglect as it was based on a misreading of Rule 15 and that it is excusable as such improvidently-filed pleading indicates to the court that plaintiff's counsel has been diligent in the prosecution of this case as it was filed within the time allowed for a response. The deadline for a response will be reopened and enlarged until May 22, 2015.

**ORDER**

**IT IS, THEREFORE, ORDERED** that plaintiff having shown cause, the Second Amended Complaint (#23) is STRICKEN as improvidently filed, plaintiff's request to file a Second Amended Complaint is DENIED without prejudice, and the time for plaintiff to file a Response to defendant's Motion to Dismiss (#20) is reopened and enlarged up to and inclusive of May 22, 2015.

Signed: May 12, 2015

A handwritten signature in black ink, appearing to read "Max O. Cogburn Jr.", written over a horizontal line. The signature is highly stylized and cursive.

Max O. Cogburn Jr.  
United States District Judge

