

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:17-cv-00160-FDW-DSC

E. RAY RAYNOR,)
)
 Plaintiff,)
)
 vs.)
)
 G4S SECURE SOLUTIONS (USA) INC., *et*)
 al.,)
)
 Defendants.)
)
 _____)

ORDER

THIS MATTER is before the Court on Defendant G4S Secure Solutions (USA), Inc.’s Motion to Strike Plaintiff’s Amended Complaint (Doc. No. 54).

After hearing the parties’ arguments at the summary judgment hearing on December 12, 2016, the Court orally granted in part and denied in part Defendants’ motion for summary judgment and indicated that it would memorialize its ruling in a detailed order. In response to the Court’s ruling, counsel for Plaintiff indicated that he may move to amend the complaint or remove the case. The Court, at the hearing and by written order, ordered Plaintiff to file any such motion by December 13, 2017. (Doc. No. 42). Plaintiff filed a motion to amend complaint to conform to the evidence on December 13, 2017. (Doc. No. 43). Plaintiff requested “leave for Plaintiff to amend the Complaint to conform to the evidence recently discovered, to include Plaintiff’s alternative claim of unlawful discrimination on the basis of his age (over 40 years) in violation of the A.D.E.A., 29 U.S.C. §623 as shown in the ‘Amendment to Complaint’ attached hereto as ‘Exhibit 3.’” Exhibit 3 entitled “AMENDMENT TO COMPLAINT” stated “Plaintiff, subject to leave of Court, and amends his Complaint by substituting the following as Plaintiff’s FIFTH CAUSE OF ACTION (having abandoned the previously stated claim for “Negligent Infliction of

Emotional Distress”) in the, in the following respects: Fifth Cause of Action (Age Discrimination in violation of the A.D.E.A. 29 U.S.C. § 623 et seq.[])”. (Doc. No. 43-3 at 2). Exhibit 3 does not set forth any additional amendments to the original complaint. (See Docs. No. 43-3, 1-1). The Court granted Plaintiff’s Motion and ordered Plaintiff to file his amended complaint by December 26, 2017. (Text Only Order granting Doc. No. 43, Dec. 18, 2017; Doc. No. 47).

Plaintiff filed his Amended Complaint on December 26, 2017. (Doc. No. 53). G4S Secure Solutions (USA), Inc. (“G4S”) subsequently moved to strike the Amended Complaint on December 27, 2017. (Doc. No. 57). G4S moves to the strike the Amended Complaint because the “Plaintiff filed an entirely different Second Amended Complaint with several new claims, factual allegations, and purported individual defendants.” (Doc. No. 57 at 2). Plaintiff has not responded to G4S’s motion to strike. This matter is scheduled for trial with docket call to occur on January 2, 2018. (Docs. No. 11, 42).

Rule 15(a)(2) of the Federal Rule of Civil Procedure governs amendments to pleadings in the circumstances before the Court. Rule 15(a)(2) provides that “a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Here, the Court gave leave for Plaintiff to file an amended complaint consistent with his motion to amend complaint to conform to evidence and the proposed amendment set forth in Exhibit 3. However, the Amended Complaint filed by Plaintiff on December 26, 2017 goes beyond the scope of Plaintiff’s motion to amend and contained allegations and causes of actions that were neither included in the original complaint nor included as an amendment to the original complaint in Exhibit 3.

Because Plaintiff has neither obtained consent from the opposing party nor permission from this Court to file an Amended Complaint in the form filed on December 26, 2017, the Court

grants G4S's Motion (Doc. No. 54) and strikes Plaintiff's Amended Complaint (Doc. No. 53). See Fed. R. Civ. P. 12(f); Angles v. Dollar Tree Stores Inc., 494 F. App'x 326, 329 (4th Cir. 2012) (finding amended complaint filed without out leave of court had no legal effect and as a result cannot toll the statute of limitations); Azure Dolphin, LLC v. Barton, No. 16 CVS 7622 (N.C. Bus. Ct. Apr. 21, 2017), ECF No. 55 (order striking amended complaint where inconsistent with the proposed amended complaint filed with granted motion to amend). Plaintiff shall have through and including 5:00 PM, January 2, 2018 to file an Amended Complaint consistent with the motion to amend complaint to conform to evidence granted by the Court. Plaintiff's failure to timely file the amended complaint or filing of an amended complaint that includes amendments beyond those set forth in Exhibit 3 of Plaintiff's motion to amend complaint to conform to evidence shall be deemed a waiver of his right to file an amended complaint consistent with the Court's December 18, 2016 leave. Any additional amendment or later amendments require further leave of the Court under Federal Rule of Civil Procedure 15(a)(2).

IT IS SO ORDERED.

Signed: January 2, 2018



Frank D. Whitney
Chief United States District Judge

