

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FABIO OLIVEIRA,

Plaintiff,

v.

**Civil Action 2:21-cv-5749
Chief Judge Algenon L. Marbley
Magistrate Judge Jolson**

MYERS WELL SERVICE, INC., et al.,

Defendants,

OPINION AND ORDER

This matter is before the Court on Plaintiff’s Motion for Leave to File First Amended Complaint (Doc. 11). Plaintiff seeks to amend his Complaint to remove one count and to add new allegations to two other counts. (*Id.* at 1). Defendants have opposed the Motion, arguing that the proposed additional allegations are insufficient, as a matter of law, to support Plaintiff’s claims and thus the proposed amendment would be futile. (Doc. 24 at 2).

Federal Rule of Civil Procedure 15(a)(1) provides:

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.

On February 8, 2022, Defendants filed their Answer to Plaintiff’s Complaint. (Doc. 4). Pursuant to Rule 15(a)(1)(B), Plaintiff had twenty-one days after that Answer was filed—until March 1, 2022—to amend his pleading as a matter of course. So when Plaintiff moved to amend, on February 28, 2022, leave of Court was not required. And “when a plaintiff is entitled under Rule

15 to file an amended pleading as of right, the fact that an amendment may be futile does not provide the Court with a basis to strike the amended pleading.” *Perkins v. Sun Chem. Corp.*, No. 1:10cv810, 2011 WL 1403069, at *1 (S.D. Ohio Apr. 12, 2011) (citing *Broyles v. Corr. Med. Servs., Inc.*, No. 08-1638, 2009 WL 3154241, at *4 (6th Cir. 2009) (holding that “because [the plaintiff] was not required to seek leave, the fact that the amendment would be futile did not provide a basis for the district court to strike [the] amended complaint.”)).

In light of the foregoing, though Plaintiff did not need to make a motion for amendment, his Motion for Leave to File First Amended Complaint (Doc. 11) is **GRANTED**. The Clerk is **DIRECTED** to file Exhibit A to (Doc. 11) as the Amended Complaint in this matter. Defendants shall have **twenty-one (21) days** from the date of this Order in which to file their Answer to the Amended Complaint. Further, because the original Complaint and Answer will no longer be the operative pleadings in this action, Defendant’s Motion for Judgment on the Pleadings (Doc. 5) is **DENIED as moot**.

IT IS SO ORDERED.

Date: March 24, 2022

/s/ Kimberly A. Jolson
KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE