

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

| | | |
|-------------------------------------|---|----------------------------|
| COREY D. CLARK, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| |) | |
| vs. |) | CASE NO. 3:13-0058 |
| |) | JUDGE SHARP/KNOWLES |
| |) | |
| E! ENTERTAINMENT TELEVISION, |) | |
| INC., |) | |
| E! ENTERTAINMENT TELEVISION |) | JURY DEMAND |
| INTERNATIONAL HOLDINGS, LLC, |) | |
| FOX INC., |) | |
| GIBSON DUNN & CRUTCHER, |) | |
| MORRISON FOERESTER, |) | |
| |) | |
| Defendants, et al. |) | |

REPORT AND RECOMMENDATION

This matter is before the Court following Plaintiff's submission of a "First Amended Complaint." Docket No. 17. The Court notes that none of the Defendants named in either the original Complaint or the "First Amended Complaint" has been served.

Fed. R. Civ. P. 15, which governs amended and supplemental pleadings, provides in relevant part as follows:

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. 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

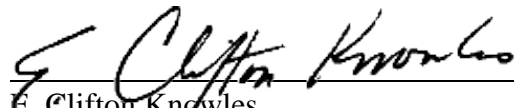
motion under Rule 12(b)(e), or (f), whichever is earlier.

(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 does not have the right to amend his Complaint as a matter of course under Rule 15(a)(1)(A) or (B), because the Complaint has not been served, nor have any Motions under Rule 12(b), (e), or (f) been served. Thus, pursuant to Fed. R. Civ. P. 15(a)(2), Plaintiff may amend his pleading only with the opposing party's written consent or with the Court's leave. There is no indication that Plaintiff has obtained the opposing parties' written consent, nor has he obtained the Court's leave.

For the foregoing reasons, Plaintiff's "First Amended Complaint" (Docket No. 17) should be STRICKEN.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days after service of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have fourteen (14) days after service of any objections filed to this Report in which to file any response to said objections. Failure to file specific objections within fourteen (14) days of service of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *See Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L. Ed. 2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.


E. Clifton Knowles
United States Magistrate Judge