

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SOLICITOR GENERAL BRIAN W.
WHITESIDE,

Plaintiff,

v.

BRAD RAFFENSPERGER, et al.,

Defendants.

CIVIL ACTION NO.
1:21-cv-03618-JPB

ORDER

This matter is before the Court on Plaintiff's Complaint for Injunctive and Declaratory Relief. ECF No. 1.

On January 28, 2022, the Court ordered Plaintiff to show cause no later than February 4, 2022, why this action should not be dismissed for failure to effectuate service of process within the time limit provided by Federal Rule of Civil Procedure 4 (“Show Cause Order”). Plaintiff did not respond to the Show Cause Order by the deadline and instead filed a second amended complaint on February 9, 2022. Plaintiff did not seek leave or consent of the adverse party to file the second amended complaint (or a first amended complaint, which he filed on September 2, 2021).

Rule 15 permits Plaintiff to file an amended complaint as of right only within twenty-one days *after* serving the original complaint. Since Plaintiff did not serve the original complaint, and he did not seek consent or leave to file the first and second amended complaints, the amended pleadings were improperly filed. Consequently, the Court **STRIKES** both amended complaints (ECF Nos. 2, 14) from the docket.

To the extent Plaintiff assumes that the filing of an amended pleading would restart the clock for service, the Court notes that the filing of an amended complaint would restart the clock for service only as to newly named defendants.

See Lindley v. City of Birmingham, 452 F. App'x 878, 879-80 (11th Cir. 2011) (explaining that "when an amended complaint names a new defendant, a plaintiff has 120 days from the date on which the amended complaint is filed to serve **that** defendant with process") (emphasis added); *Proctor v. Navka, LLC*, No. 4:14-CV-144, 2015 WL 1788939, at *2–3 (S.D. Ga. Apr. 20, 2015), *aff'd*, No. 15-12165 (11th Cir. Oct. 22, 2015) (finding that the time period for service under Rule 4(m) is not reset by the filing of an amended complaint, except as to defendants new to the amended complaint); *Wright v. Dorough & Dorough LLC*, No. 1:13-cv- 01394, 2013 WL 12383273, at *1 n.1 (N.D. Ga. Oct. 8, 2013), *report and recommendation adopted*, No. 1:13-CV-1394-CAP, 2013 WL 12383262 (N.D. Ga.

Nov. 4, 2013) (noting that courts that have considered whether an amended complaint extends the time limit for service have found that it does not) (collecting cases). Given that the original complaint and the two amended pleadings all name identical defendants, the time for service would not be extended by the amended pleadings—even if the Court were to allow the pleadings to stand.

Rule 4(m) provides that, after notice to the plaintiff, a court may dismiss an action without prejudice if the defendant is not served within ninety days after the complaint is filed. Additionally, Local Rule 41.3(A)(2) authorizes a court to dismiss a case for want of prosecution for failure to obey a lawful order of the court.

Plaintiff failed to serve Defendants, despite notice in the Show Cause Order that the case may be dismissed for failure to effectuate service of process. Indeed, Plaintiff did not respond to the Show Cause Order. Accordingly, this action is **DISMISSED** without prejudice, pursuant to Rule 4(m) and Local Rule 41.3(A)(2). The pending Motion to Intervene (ECF No. 5) is **DENIED** as moot. The Clerk is **DIRECTED** to close this case.

SO ORDERED this 11th day of February, 2022.



J.P. BOULEE
United States District Judge