

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

THOMAS CARNELL COURAM,

Plaintiff,

v.

UAB POLICE DEPARTMENT, et al.,

Defendants.

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Case No.: 2:16-cv-02055-RDP

ORDER

This matter is before the court on Plaintiff's Amended Complaint. (Doc. # 4). On December 28, 2016, the court ordered Plaintiff to file an amended complaint. (Doc. # 3). While Plaintiff filed his Amended Complaint in a timely manner, it fails to fully comply with the Federal Rules of Civil Procedure.

Plaintiff's Amended Complaint is the operative pleading -- that is, the only document filed by Plaintiff that can be considered in joining the issues in this case. *See Krinsk v. SunTrust Banks, Inc.*, 654 F.3d 1194, 1202 (11th Cir. 2011) (stating that "an amended complaint supersedes the initial complaint and becomes the operative pleading in the case."). As such, Plaintiff's Amended Complaint (and in turn, his soon to be filed Second Amended Complaint) must not refer back to Plaintiffs' first complaint in any way. Plaintiff's current Amended Complaint references his breach of contract claim, but does not explain (or sufficiently allege) what happened and what wrong he suffered.

Accordingly, Plaintiff is **DIRECTED** to file a Second Amended Complaint **on or before February 22, 2017**. Plaintiff's Second Amend Complaint should provide each fact regarding the formation and alleged breach of the contract in individually numbered paragraphs. In his

pleading, Plaintiff should explain what actions form the basis of his claim, and what specifically each defendant did to cause him harm.¹ *See, e.g. Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1014 (11th Cir. 2005) (finding that a plaintiff should plead the “who,” “what,” “where,” “when,” and “how,” of the claim asserted).

The Second Amended Complaint **SHALL** comply with Federal Rules of Civil Procedure 8(a),² 8(d)(1),³ 10(b),⁴ and 11(b).⁵ Each count in the Second Amended Complaint shall contain no more than one discrete claim for relief. The Second Amended Complaint must also contain allegations of fact which support each discrete claim. Specifically, Plaintiff must set forth each claim he is making against Defendants separately, in a short, plain statement, containing allegations of fact and referencing the statute or law under which each separate claim is brought

¹ Plaintiff’s Second Amended Complaint should explain who he made the contract with, and what the specific terms of the contract were. The Second Amended Complaint should explain which Defendants breached the contract, and detail what those Defendants specifically did to cause him harm. Plaintiff, in his Second Amended Complaint, should conclude by stating what specific harm he suffered and the damages he claims as a result of the breach of contract.

² Rule 8(a) **Claims for Relief.** A pleading that states a claim for relief must contain: (1) a short and plain statement of the grounds for the court’s jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

³ Rule 8(d) **Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.** (1) In General. Each allegation must be simple, concise, and direct. No technical form is required.


⁴ Rule 10 **Form of Pleadings.** (b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence — and each defense other than a denial — must be stated in a separate count or defense.

⁵ Rule 11 **Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions.** (b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

and the relief sought under each separate claim. This will enable Defendants to properly respond to each separately numbered claim and allegation. The Second Amended Complaint must include all of Plaintiff's claims in this action and must not refer back to the original complaint. Only claims set forth in the amended complaint will be considered. Failure to file a Second Amended Complaint as directed may result in this action being dismissed for failure to state a cause of action upon which relief can be granted.

The Clerk of the Court is **DIRECTED** to forward a copy of this order to Plaintiff.

DONE and **ORDERED** this February 2, 2017.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE