

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

SHAWN J. TARDY, et al.;)
)
)
Plaintiffs,) Case No.: 1:13-cv-02841-CCB
)
v.)
)
MARTIN J. O'MALLEY, et al.;)
)
)
Defendants.)

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Now pending before the Court is Defendants' Motion to Dismiss Plaintiffs' Complaint, filed pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). After Defendants filed their Motion to Dismiss, Plaintiffs filed an Amended Complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B), which allows for a pleading to be amended once as a matter of right within "21 days after service of a motion under Rule 12(b), (e), or (f)" Plaintiffs received Defendants' Motion to Dismiss on October 23, 2013, and filed their Amended Complaint on October 28, 2013, well within the 21 days allowed. Defendants' responsive pleading to Plaintiffs' Amended Complaint is due no later than November 19, 2013. Plaintiffs' filing of an Amended Complaint has rendered the previous Complaint a legal nullity. *See Young v. City of Mt. Rainer*, 238 F.3d 567, 572 (4th Cir. 2001) ("As a general rule, 'an amended pleading ordinarily supersedes the original and renders it of no legal effect.'" (quoting *Chrysen/Montenay Energy Co. v. Shell Oil Co.*, 226 F.3d 160, 162 (2nd Cir. 2000))). Because the original Complaint has been superseded, any motions pertaining must

be denied as moot. *Bhari Info. Tech. Sys. Private v. Sriram*, 2013 U.S. Dist LEXIS 154693 (D. Md. 2013) (“I denied Defendant’s Motion to Dismiss as moot because Plaintiff had filed an Amended Complaint.”); *Severn Mktg. Assocs. v. Doolin*, 2010 U.S. Dist. LEXIS 102992 (D. Md. 2010) (“Doolin moved to dismiss the complaint on January 13, 2010, a motion this court denied as moot after Delmarva filed an amended complaint”); *Barnes v. Birds Eye Foods LLC*, 2010 U.S. Dist. LEXIS 69579 (W. D. Mich. 2010) (“An amended complaint filed after a motion to dismiss has been filed renders the motion to dismiss moot.”).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants’ Motion to Dismiss as moot and direct Defendants to file their responsive pleading to the Amended Complaint on or before November 19, 2013.

Respectfully submitted,

/s/ John Parker Sweeney

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of November, 2013, copies of this Opposition to Defendants' Motion to Dismiss, were served, via electronic delivery to Defendants' counsel at the below e-mail addresses:

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