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November 4, 2011

The Honorable Peter G. Sheridan (U.S.D.J.)
The Honorable Douglas Arpert (U.S.M.J.)
District Court for the District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street, Room 2020
Trenton, NJ 08608

Re: Sivoletta v. AXA Equitable Life Ins. Co. et al.,
No. 3:11-cv-4194

Dear Judges Sheridan and Arpert:

On July 21, 2011, Plaintiff filed her Complaint in the above matter. Defendants were served on July 26, 2011, and, on August 15, 2011, they requested a sixty one day extension, from August 16, 2011, to file a Motion to Dismiss. Plaintiff agreed to this request, and Defendants also agreed that Plaintiff would have sixty days to file her Brief in Opposition to the Motion to Dismiss. On August 15, 2011, the Defendants submitted a letter to this Court which memorialized these agreements. The Court granted the Defendants' request, but denied Plaintiff's request without prejudice, and informed Plaintiff that, upon the filing of the Defendants' Motion to Dismiss, she may request additional time to appropriately respond to the Defendants' Motion to Dismiss (Docket No. 6).

On October 17, 2011, Defendants filed their Motion to Dismiss, returnable November 21, 2011. Thus, Plaintiff's opposition brief is currently scheduled to be filed on November 7, 2011. However, today, in response to the Defendants' Motion to Dismiss, Plaintiff, pursuant to Fed. R. Civ. Pro. 15(a), filed an Amended Complaint as a matter of course, making substantive changes to her Complaint and adding three additional claims.¹ Plaintiff's Amended Complaint

¹A Motion to Dismiss is not a responsive pleading. See e.g., cases collected at Taj Mahal Enterprises, Ltd. v. Trump 745 F.Supp. 240, 245 (D.N.J., 1990); Merritt v. Fogel, 349 Fed.Appx. 742, 745, (3rd Cir. 2009); and Plaster v. Beard, No. 3:06cv1655, 2007 WL 3101673, *1-2 (M.D.P.A. Oct 18, 2007).

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supersedes the original Complaint. As a result, the Defendants' motion to dismiss the original complaint is rendered moot by the filing of the Amended Complaint. See e.g., Merritt v. Fogel, 349 Fed.Appx. 742, 745, (3d Cir. 2009); Young v. St. Luke's Hosp. No. 09-cv-03460, 2010 WL 1348468, 6 (E.D.Pa., March 30, 2010); ("It is well-settled that an amended complaint supersedes the original complaint and renders it of no legal effect") and Plaster v. Beard, No. 3:06cv1655, 2007 WL 3101673, *1-2 (M.D.P.A. Oct 18, 2007).

Plaintiff will contact the Defendants on Monday November 7, 2011, to confer with them regarding whether they intend to file a motion to dismiss Plaintiff's Amended Complaint and, at that time, to address any scheduling issues. We hope to present a joint stipulation to the Court which provides for an amended briefing schedule.

In light of the above cases, Plaintiff believes that a response to the Defendants' current motion to dismiss is not required, and that the Court would benefit from a single brief in opposition to the Defendants' new, if any, motion to dismiss. However, to the extent the Court feels that a brief should be filed, Plaintiff is providing notice, pursuant to L.Civ.R. 7.1(d)(5), of her election to adjourn Defendants' motion to the next available motion day. The new return date for the motion will be December 5, 2011; Plaintiff's opposition brief will be due on November 21, 2011, and the Defendants' reply, if any, will be due on November 28, 2011.

In addition to this extension, and to the extent briefing on the Defendants' current Motion to Dismiss is to go forward, Plaintiff, pursuant to Fed. R. Civ. Pro. 6(b), respectfully requests, that the Court grant Plaintiff an extension of time to file her opposition brief, until December 6, 2011. Good cause for this extension exists because: (i) Defendants were provided with more than sixty days to draft their Motion to Dismiss, (ii) the case involves complex legal issues, (iii) Plaintiff, since the Defendants' Motion to Dismiss was filed, has concentrated her efforts on amending her complaint, and (v) Defendants (through their former counsel), previously agreed to Plaintiff's request that she be provided sixty days to respond to the Defendants' Motion to Dismiss and this extension request affords Plaintiff a shorter period than sixty days from the date Defendants' filed their Motion to Dismiss on October 17, 2011.

However, as stated above, it is Plaintiff's position that the requests for these extensions are moot because, in light of the above cited cases, Plaintiff is not required to respond to the Defendants' current motion to dismiss and this request is submitted only out of an abundance of caution.

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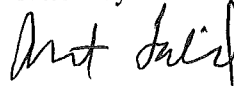
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With the hope that the Court will conclude that Defendant's motion to dismiss is now moot as a result of the filing of Plaintiff's Amended Complaint, I have included a "So Ordered" provision at the foot of this letter.

Thank you.

Respectfully submitted,

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cc: Jonathan M. Korn (via email and ECF)
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Ordered that upon the filing of Plaintiff's
Amended Complaint, Defendants' motion to
dismiss is deemed to be moot
