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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Barry Northcross Patterson,)	
)	
Plaintiff,)	No. CIV-05-1159-PHX-RCB (MHB)
)	
vs.)	O R D E R
)	
Charles L. Ryan, <i>et al.</i>)	
)	
Defendants.)	

Currently pending before the court are two motions filed by plaintiff *pro se*, Barry Northcross Patterson: (1) a "Motion to Strike Defendants' []Amended Motion to Dismiss RLUIPA and Injunction Claims[]" (Doc. 121); and (2) a "Motion for Extension of Time" (Doc. 122).¹ For the reasons set forth below, the court DENIES both of these motions.

Background

Assuming familiarity with this protracted litigation, the

¹ The court is well aware that defendants have not yet filed responses to these motions. Such responses would not aid in the court's decisional process, however. Moreover, there is no prejudice to defendants in not allowing them to respond as these motions are being resolved in their favor.

1 court sets forth only the background essential to resolving the two
2 motions identified above. On April 21, 2010, defendants Broderick
3 and Mason filed a "Motion to Dismiss RLUIPA and Injunction Claims"
4 (Doc. 90), which plaintiff opposed (Doc. 92). That motion was
5 directed to plaintiff's first amended complaint ("FAC"). Prior to
6 the resolution of that motion to dismiss, however, plaintiff was
7 granted leave to and did file a Second Amended Complaint ("SAC").

8 Based upon the well-settled rule that "[a]n amended complaint
9 supersedes the original complaint[,] and "[a]fter amendment, the
10 original pleading is treated as nonexistent[,] this court held
11 that defendants' motion to dismiss the FAC was "moot and . . .
12 denied [it] without prejudice." Ord. (Doc. 113) at 3:11. Shortly
13 thereafter, on October 27, 2010, defendants Broderick and Mason
14 filed their "Amended Motion to Dismiss RLUIPA and Injunction
15 Claims" (Doc. 115). Plaintiff is seeking to strike that motion,
16 which he "believes is erroneously being accepted as a Motion to
17 Dismiss his 2nd Amended Complaint." Mot. (Doc. 122). If the court
18 denies his motion to strike, plaintiff is seeking additional time,
19 beyond the current court ordered date of December 8, 2010, to
20 respond to defendants' amended motion.

21 Discussion

22 Plaintiff is moving to strike² defendants' motion to dismiss

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24 ² At first glance, this motion appears to run afoul of LRCiv 7.2(m),
25 which narrowly circumscribes when a motion to strike may be filed. In particular,
that rule states:

26 Unless made at trial, a motion to strike may be filed
27 only if it is authorized by statute or rule, such as Federal
28 Rules of Civil Procedure 12(f), 26(g)(2) or 37(b)(2)(A)(iii),
or if it seeks to strike any part of a filing or submission
on the ground that it is prohibited (or not authorized) by a
statute, rule, or court order.

1 because they did not seek a court order "allowing an Amended
2 Motion[.]" Mot. (Doc. 121). Seemingly, plaintiff is operating
3 under two misconceptions. The first is that because he had to seek
4 leave to file an amended complaint, defendants also had to seek
5 leave of court before filing their most recent motion to dismiss.
6 The second related misconception is that because the court denied
7 defendant's prior motion to dismiss, defendants also were required
8 to seek a court order prior to filing the present motion.
9 Plaintiff is wrong on both counts.

10 Even absent a court order, defendants were entitled (as they
11 did) to file their pending motion to dismiss. Indeed, in its
12 October 13, 2010, order denying as moot defendants' motion to
13 dismiss the FAC, the court recognized the possibility that
14 defendants would file a motion to dismiss the SAC. The court
15 directed that "[i]f Defendants decide to move for dismissal of
16 Plaintiff's [SAC] for any defense listed under Federal Rules of
17 Civil Procedure 12(b), any such motion must be filed before a
18 responsive pleading." Ord. (Doc. 113) at 3:12-14 (citation
19 omitted). Defendants complied with that Order by filing their
20 "Amended Motion to Dismiss RLUIPA and Injunction Claims."

21 To be sure, the SAC is not referenced in the title of
22 defendants' motion. Indeed, there is no mention of any complaint
23 in the title. But it is clear from even a quick perusal of
24 defendants' motion that it is directed at the SAC. See, e.g., Mot.
25 (Doc. 115) at 2:20; and at 2:24. Thus, despite plaintiff's

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LR Civ 7.2(m) (emphasis added). It is possible, however, to construe plaintiff's
motion as seeking to strike because defendants' amended motion violates a prior
court order. Based upon that generous construction, the court will consider the
merits of plaintiff's motion to strike.

1 contrary assertion, there is nothing "erroneous" about defendants
2 filing a motion to dismiss the SAC. See Mot. (Doc. 122).
3 Although defendants, for whatever reason, styled their motion as
4 "amended," that does not change the fact that it is properly
5 directed at certain claims in the SAC. Accordingly, there is no
6 basis for striking defendants' "Amended Motion," and the court
7 DENIES plaintiff's motion to do so (Doc. 121).

8 If the court, as it has, denies plaintiff's motion to strike,
9 he is seeking "additional time" to file a "supplement" to his
10 response to defendant's "Amended Motion to Dismiss." Mot. (Doc.
11 122). This motion can also be read as seeking additional time to
12 respond to defendants "mooted and denied motion [to dismiss]
13 [(Doc.)] . . . 90[.]" Id. The court denies this particular request
14 as moot. Because, as plaintiff acknowledges, the court denied that
15 earlier motion to dismiss, there is no need for him to file any
16 further response as to that motion.

17 Turning to plaintiff's request to supplement his response to
18 the pending motion to dismiss, plaintiff does not specify how much
19 additional time he is seeking, nor why he needs such an extension.
20 Regardless, the court sees no basis for granting plaintiff an
21 extension of time.

22 After defendants filed their "Amended Motion to Dismiss,"
23 "[p]rior to receiving the required Notice and Warning from the
24 Court, Plaintiff filed his response to Defendants' Motion (Doc.
25 116)." Ord. (Doc. 120) at 1:17-18. "On November 10, 2010, the
26 Court, nonetheless, provided Plaintiff with a Notice and Warning
27 stating that, 'if he has not already done so, Plaintiff must file a
28 response - or supplement his response - to Defendants' Motion to

1 Dismiss no later than December 8, 2010' (Doc. 118)." Id. at 1:18-
2 21. Plaintiff then sought "clarification of the Court's briefing
3 schedule[.]" Id. at 1:22. Reiterating, "the Court instruct[ed]
4 Plaintiff that if he so chooses . . . , he may file a supplement to
5 his response to Defendants' 'Amended Motion to Dismiss' no later
6 than December 8, 2010." Id. at 1:23-25.

7 Plaintiff has had ample opportunity and notice of the December
8 8, 2010, date for filing his supplemental response. He is not
9 offering any reason, let alone a compelling one, for an extension
10 of time. Therefore, the court abides by the prior order and DENIES
11 plaintiff's motion for an extension of time (Doc. 122). Plaintiff
12 must file a supplement to his response, if any, to defendants'
13 "Amended Motion to Dismiss" no later than December 8, 2010.

14 Accordingly,

15 IT IS ORDERED that:

16 (1) plaintiff's "Motion to Strike Defendants' []Amended
17 Motion to Dismiss RLUIPA and Injunction Claims of 10-27-
18 10 []" (Doc. 121) is DENIED; and

19 (2) plaintiff's "Motion for Extension of Time" (Doc. 122)
20 is DENIED.

21 DATED this 1st day of December, 2010.

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28 Copies to counsel of record and plaintiff *pro se*



Robert C. Broomfield
Senior United States District Judge