

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

7

8

9

Kristy Joy Bylas,

)

CV 11-02107-PHX-FJM

10

Plaintiff,

)

ORDER

11

vs.

)

12

United States of America,

)

13

Defendant.

)

14

)

15

16

The court has before it defendant's motion to dismiss (doc. 5) and plaintiff's response (doc. 8). Defendant did not file a reply, and the time for replying has expired.

18

This case arises from injuries to plaintiff's hand resulting from a necrotizing infection. Plaintiff alleges that the care she received from the San Carlos Indian Health Service Hospital in San Carlos, Arizona constituted medical malpractice. Defendant filed a motion to dismiss on October 26, 2011, arguing that the complaint should be dismissed pursuant to Rule 12(b)(6), Fed. R. Civ. P. for failure to state a claim. Alternatively, defendant argues that the complaint must be dismissed for failure to file a certifying statement whether expert opinion testimony is necessary as required by Arizona law. Plaintiff has since filed the certificate (doc. 9).

26

On November 18, 2011, plaintiff filed her first amended complaint (doc. 10). A party may amend its pleading once as a matter of course within twenty-one days after service of a Rule 12(b) motion. Fed. R. Civ. P. 15(a)(1)(B). An amended complaint supercedes the

27

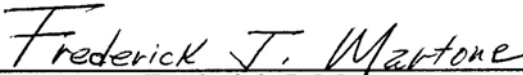
28

1 original complaint. Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Because
2 plaintiff's amendment was timely, this action is now proceeding under the first amended
3 complaint and defendant's motion to dismiss is rendered moot.

4 **IT IS ORDERED DENYING** defendant's motion to dismiss on grounds of mootness
5 (doc. 5).

6 DATED this 1st day of December, 2011.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Frederick J. Martone
United States District Judge