

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

STEPHEN P. HACALA,  
Individually and as Administrator  
of the Estate of Stephen Patrick  
Hacala Jr., deceased

PLAINTIFF

v.

No. 5:19-CV-05131

AMAZON.COM, INC., et al

DEFENDANTS

**OPINION AND ORDER**

Before the Court is Plaintiff's motion (Doc. 59) for leave to file a proposed third amended complaint and proposed third amended complaint (Doc. 59-1). Defendant Sincerely Nuts, Inc. ("Sincerely Nuts") filed a motion (Doc. 56) for leave to file a third-party complaint and a motion (Doc. 57) to file an amended answer. Defendant Amazon.Com, Inc. ("Amazon") filed a motion (Doc. 58) for leave to file an amended answer. Neither Amazon nor Sincerely Nuts oppose Plaintiff's motion for leave.<sup>1</sup>

Plaintiff's proposed third amended complaint adds Bedemco and FDL as parties in place of two of the "John Doe" defendants. Bedemco is alleged to be a foreign corporation with a principal place of business in New York. FDL is alleged to be a foreign corporation with a principal place of business in the United Kingdom. Paragraph four of the proposed third amended complaint states Plaintiff is seeking recovery from "Amazon, Sincerely Nuts, Bedemco, and John Does 2 and 3." (Doc. 59-1, p. 2, ¶ 4). Because Plaintiff's motion states that Bedemco and FDL are taking the place of John Doe defendants 1 and 2, it is likely that paragraph 4 of the proposed

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<sup>1</sup> Amazon filed a notice (Doc. 60) of non-opposition to Plaintiff's motion. Sincerely Nuts also filed a notice (Doc. 61) of non-opposition to Plaintiff's motion.

amended complaint is in error and should read “This Complaint seeks recovery from Amazon, Sincerely Nuts, Bedemco, FDL, and John Doe 3 . . . .”

Plaintiff’s motion for leave to file a third amended complaint is GRANTED. Plaintiff is directed to file the third amended complaint but must correct the naming of John Doe 2 in paragraph 4. Further, Plaintiff must supplement the citizenship allegations of Bedemco and FDL to comply with the requirements of 28 U.S.C. § 1332(c)(1). A complaint must “set forth with specificity a corporate party’s state of incorporation *and* principal place of business” and diversity is not properly established if the complaint fails to state the place of incorporation. *Sanders v. Clemco Indus.*, 823 F.2d 214, 216 (8th Cir. 1987) (emphasis in original). Plaintiff’s proposed third amended complaint states Bedemco and FDL are foreign corporations but does not specify the place of incorporation. In order to establish subject matter under 28 U.S.C. § 1332, Plaintiff must allege Bedemco and FDL’s places of incorporation and principal places of business.

An amended complaint supersedes an original complaint and renders the original as without legal effect. *In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir. 2000). Sincerely Nuts’ motion for leave to file a third-party complaint seeks to bring claims against Bedemco and FDL, apparently the same parties Plaintiff is adding to his third amended complaint. Both Sincerely Nuts and Amazon’s motions to file amended answers are directed at Plaintiff’s second amended complaint and allege fault of Bedemco and FDL. Because a third amended complaint is to be filed and may affect Defendant Sincerely Nuts’ motions and Defendant Amazon’s motion, those motions will be denied with leave to refile.

IT IS THEREFORE ORDERED that Plaintiff’s motion (Doc. 59) to file a third amended complaint is GRANTED. Plaintiff is directed to immediately file the proposed third amended complaint with the revisions stated in this order. Defendants’ motions (Docs. 56, 57, & 58) are

DENIED without prejudice to their refiling. Defendants may file responses within fourteen (14) days after the third amended complaint is filed.

IT IS SO ORDERED this 12th day of February, 2020.

*P. K. Holmes, III*

P.K. HOLMES, III  
U.S. DISTRICT JUDGE