

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

JOHN S. WILLIAMS, et al.,
*On behalf of themselves and
all others similarly situated,*

Plaintiffs,

v.

CASE NO. 3:09cv225/RV/MD

BLUE CROSS AND BLUE SHIELD
OF FLORIDA, INC.,

Defendant.

ORDER

On June 4, 2009, the defendant filed a motion to dismiss/motion for more definite statement (doc. 4), and a motion to strike demand for jury trial (doc. 5). Five days thereafter, the plaintiffs filed an amended complaint.

Rule 15 of the Federal Rules of Civil Procedure governs the amendment of pleadings, and it provides in relevant part:

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course:

(A) before being served with a responsive pleading; or

(B) within 20 days after serving the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

"For purposes of this Rule, a motion to dismiss is not a responsive pleading." *Williams v. Board of Regents of University System of Georgia*, 477 F.3d 1282, 1291 (11th Cir. 2007)

(citation omitted); *see also, e.g., Fortner v. Thomas*, 983 F.2d 1024, 1032 (11th Cir. 1993) (“It is well established in this circuit that a motion to dismiss is not considered a responsive pleading for purposes of rule 15(a).”) (collecting cases). Thus, because the defendant here filed a motion to dismiss, not a responsive pleading, the plaintiffs were entitled to amend their complaint once as a matter of course. The motion to dismiss, therefore, must be denied as moot. And because plaintiffs have withdrawn the jury demand in their amended complaint, the motion to strike has been rendered moot as well.

For these reasons, the motion to dismiss (doc. 4) and motion to strike (doc. 5) must be, and are, DENIED.

DONE AND ORDERED this 11th day of June, 2009.

/s/ Roger Vinson

ROGER VINSON
Senior United States District Judge