

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 12-61278-Civ-SCOLA**

FAUSTA VIRGILE, et al.,

Plaintiffs,

vs.

THE BANK OF NEW  
YORK MELLON, et al.,

Defendants.

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**ORDER DENYING MOTION TO DISMISS AS MOOT**

THIS MATTER is before the Court on the Defendants' Motion to Dismiss [ECF No. 8], filed on July 23, 2012. Subsequently, on August 9, 2012, the Plaintiff filed an Amended Complaint [ECF No. 12].

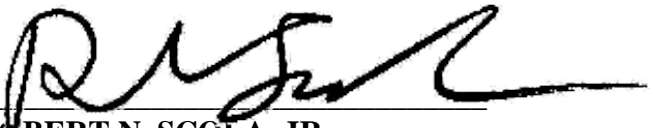
Federal Rule of Civil Procedure 15(a) allows a party to amend the pleadings "once as a matter of course" if done within "21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b)," whichever comes first. Fed. R. Civ. P. 15(a)(1)(B). "For purposes of this Rule, a motion to dismiss is not a responsive pleading." *Williams v. Bd. of Regents of the Univ. Sys. of Ga.*, 477 F.3d 1282, 1291 (11th Cir. 2007).

Here, the Plaintiff filed the Amended Complaint 18 days after Defendants filed their Motion to Dismiss. Therefore, Plaintiff's amendment must be allowed as a matter of course, and does not require permission from the Court. "When the plaintiff has the right to file an amended complaint *as a matter of course*," which is the case here, "the plain language of Rule 15(a) shows that the court lacks the discretion to reject the amended complaint[.]" *See id.* at 1293 n.6 (emphasis original).

Further, because Plaintiff's Amended Complaint supersedes the prior Complaint, Defendants' Motion to Dismiss the original Complaint is now moot. *See Taylor v. Alabama*, 275 F. App'x 836, 838 (Cir. 11th 2008) (noting that when "Plaintiffs amended their complaint," the "Defendants' motion to dismiss became moot").

Therefore, it is hereby **ORDERED and ADJUDGED** that the Defendants' Motion to Dismiss [ECF No. 8] is **DENIED AS MOOT**, in light of the newly-filed Amended Complaint.

**DONE and ORDERED** in chambers, at Miami, Florida August 9, 2012.



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**ROBERT N. SCOLA, JR.**  
**UNITED STATES DISTRICT JUDGE**

Copies to:  
*U.S. Magistrate Judge*  
*Counsel of record*