

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

Case No. 12-22418-Civ-SCOLA

MIGUEL A. HERVIS,

Plaintiff,

vs.

CITY OF MIAMI,

Defendant.

ORDER DENYING MOTION TO DISMISS AS MOOT

THIS MATTER is before the Court on the Defendant City of Miami's Motion to Dismiss [ECF No. 8], filed on August 3, 2012. Subsequently, on August 9, 2012, the Plaintiff filed an Amended Complaint [ECF No. 10].

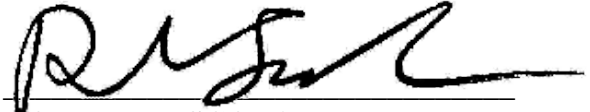
Federal Rule of Civil Procedure 15(a) allows a party to amend the pleadings "once as a matter of course" if done within "21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b)," whichever comes first. Fed. R. Civ. P. 15(a)(1)(B). "For purposes of this Rule, 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 six days after Defendant filed its 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, Defendant's 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 Defendant's 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.

A handwritten signature in black ink, appearing to read 'R. Scola, Jr.', written over a horizontal line.

ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE

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