

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
OWENSBORO DIVISION**

**CIVIL ACTION NO. 4:17CV-00051-JHM**

**JACK JOHNSTON, individually and on  
behalf of those similarly situated**

**PLAINTIFF/COUNTER-DEFENDANT**

**V.**

**J&B MECHANICAL, LLC**

**DEFENDANT/COUNTERCLAIMANT**

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court on a motion by Plaintiff/Counter-Defendant, Jack Johnston, to dismiss the counterclaim filed by Defendant/Counterclaimant, J&B Mechanical, LLC [DN 13]. Fully briefed, this matter is ripe for decision.


Jack Johnston filed a civil action against J&B Mechanical alleging that J&B Mechanical failed to pay the correct amount of overtime compensation to Johnston, and others similarly situated, in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.* (Complaint ¶1.) J&B Mechanical filed an answer denying that it failed to pay the correct amount of overtime compensation. (Answer ¶¶ 17-27.) Contemporaneously with its answer, J&B Mechanical filed a counterclaim against Johnston alleging that Johnston “engaged in a pattern and practice of fraud, misrepresentation, disloyalty, and deceit” with respect to time he reported working at or while traveling to or from out-of-town worksites. (Counterclaim ¶¶ 8-9.) On July 5, 2017, Johnston filed a motion to dismiss the counterclaim. On July 26, 2017, J&B Mechanical filed an amended counterclaim.

Fed. R. Civ. P. 15(a) “authorizes a party to amend his pleading once as a matter of course within 21 days after serving it, or if the pleading is one to which a responsive pleading is required, 21 days after service of the responsive pleading, or 21 days after service of a

dispositive motion under Rule 12, whichever is earlier.” Martinez v. Hiland, 2017 WL 939009, at \*1 (W.D. Ky. Mar. 9, 2017)(citing Fed. R. Civ. P. 15(a)(1)(A) and (B)). In the instant case, Johnston filed a motion to dismiss the counterclaim against him on July 5, 2017. Twenty-one days later, J&B Mechanical amended its counterclaim as a matter of course as permitted by Fed. R. Civ. P. 15(a). Accordingly, because the filing of the amended counterclaim supersedes the original counterclaim and because Johnston’s motion to dismiss is directed to the original counterclaim, the motion to dismiss is now moot.

For these reasons, **IT IS HEREBY ORDERED** that the motion by Plaintiff/Counter-Defendant, Jack Johnston, to dismiss the counterclaim filed by Defendant/Counterclaimant, J&B Mechanical, LLC [DN 13] is **DENIED AS MOOT**.

cc: counsel of record

  
Joseph H. McKinley, Jr., Chief Judge  
United States District Court

August 15, 2017