

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

MARUCCI SPORTS, LLC

CIVIL ACTION
NO. 12-223-BAJ-SCR

VERSUS

THE NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION, THE NATIONAL FEDERATION
OF STATE HIGHSCHOOL ASSOCIATIONS, and
WASHINGTON STATE UNIVERSITY

**RULING ON DEFENDANTS' MOTIONS TO DISMISS PLAINTIFF'S FIRST
AMENDED AND RESTATED COMPLAINT**

On April 18, 2012, Plaintiff, Marucci Sports, LLC ("Plaintiff"), filed its original Complaint against Defendants, the National Collegiate Athletic Association ("NCAA"), the National Federation of State High School Associations ("NFHS"), and Washington State University ("WSU") ("Defendants," collectively).¹ (doc. 1) On May 9, 2012, the NCAA filed a motion to dismiss (doc. 22), and NFHS filed a similar motion two days later on May 11, 2012. (doc. 24) Plaintiff then filed an Amended and Restated Complaint (doc. 33) on May 15, 2012, as permitted under Rule 15(a)(1)9B) of the Federal Rules of Civil Procedure. The motions to dismiss Plaintiff's original complaint by NCAA and NFHS were then terminated by the Court.

The NCAA and NFHS then filed motions to dismiss Plaintiff's First Amended and Restated Complaint on May 25, 2012. (doc. 42, 44) Soon after, the Court granted Plaintiff's motion to amend its First Amended and Restated Complaint.

¹ On May 30, 2012, WSU was dismissed without prejudice from this matter pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

(doc. 63) Plaintiff then filed a Second Amended and Restated Complaint on June 5, 2012. (doc. 64) The new Complaint does not specifically refer to or adopt and incorporate by reference the earlier Complaints. “An amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading.” *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994) (citing *Boelens v. Redman Homes, Inc.* 759 F.2d 504, 508 (5th Cir. 1985); *see also Sam v. Louisiana*, 409 Fed. Appx. 758, 762 (5th Cir. 2011).

Under controlling Fifth Circuit precedent, the First Amended and Restated Complaint has “no legal effect.” *King*, 31 F.3d at 346. Therefore, the Court denies the NCAA and NFHS motions to dismiss the First Amended and Restated Complaint as moot.

The NCAA and NFHS have filed motions to dismiss the Second Amended and Restated Complaint (doc. 67, 71) which incorporate arguments made in their motions to dismiss the First Amended and Restated Complaint. The Court is not foreclosing consideration of these arguments in this Ruling, and will examine the theories in its future Rulings on the NCAA and NFHS motions to dismiss Plaintiff’s Second Amended and Restated Complaint.

CONCLUSION

For the foregoing reasons, Defendants NCAA and NFHS Motions to Dismiss Plaintiff's First Amended and Restated Complaint (doc. 42, 44) are DENIED as moot.

Defendants' Motions to Dismiss Plaintiff's Second Amended and Restated Complaint (docs. 67, 71) remain pending before the Court. The Court will consider all arguments made and incorporated into such motions.

Baton Rouge, Louisiana, February 26, 2013.

A handwritten signature in black ink, appearing to read "Brian A. Jackson", written over a horizontal line.

BRIAN A. JACKSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA