

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MEMORANDUM AND ORDER

The seven remaining Defendants named in the original “Class Action Junk-Fax Petition”¹ filed on March 24, 2017, a motion to dismiss the action with prejudice under Federal Rule of Civil Procedure 12(b)(6) [ECF No. 20]. In the original petition, Plaintiff alleged “some or all of the Defendants or someone acting on their behalf”² sent a fax in violation of the Junk Fax Prevention Act of 2005, 47 U.S.C. § 227. Defendants based their pending motion to dismiss, in relevant part, on the fact that Plaintiff did not name as Defendants the only two entities identified on the challenged fax: The AMC Free CE Academy and Sherman College.³

Plaintiff filed a memorandum in opposition to the motion to dismiss and, on April 4, 2017, a “First Amended Class Action Complaint” [ECF No. 24]. In addition to naming as Defendants the seven Defendants and ten John Doe Defendants identified in the original petition,

¹ At Plaintiff's request, the Court dismissed without prejudice the other Defendants, specifically, ten John Doe Defendants, named in the original petition. See PI's Notice of Voluntary Dismissal, filed Mar. 20, 2017 [ECF No. 13], and Order, filed Mar. 23, 2017 [ECF No. 16].

² Pl.’s Pet’n, ¶ 15 [ECF No. 1-1 at 5].

³ See Defs.’ Mem. Supp. Mot. Dismiss [ECF No. 21].

Plaintiff's first amended complaint adds four Defendants: AMC Family, AMC Free CE Academy, Inc., AMC Right Start, Inc., and Advanced Management for Chiropractors, Inc. Id.

With regard to pleadings that require a responsive pleading, Federal Rule of Civil Procedure 15(a)(1)(B) allows a party "to amend its pleading once as a matter of course within" twenty-one days after service of a motion under Rule 12(b), 12(e), or 12(f). Plaintiff filed its first amended class action complaint within twenty-one days after service of the pending motion to dismiss. "It is well-established that an amended complaint supercedes an original complaint and renders the original complaint without legal effect." In re Atlas Van Lines, Inc., 209 F.3d 1064, 1067 (8th Cir. 2000) (citing Washer v. Bullitt Cnty., 110 U.S. 558, 562 (1884)). Due to the timely filing of Plaintiff's first amended complaint, the pending motion to dismiss is moot because it is seeking dismissal of the original petition, which is no longer before the Court. After careful consideration,

IT IS HEREBY ORDERED that the pending motion to dismiss the action with prejudice under Federal Rule of Civil Procedure 12(b)(6) [ECF No. 20] is **DENIED without prejudice** as moot.

Patricia L. Cohen
PATRICIA L. COHEN
UNITED STATES MAGISTRATE JUDGE

Dated this 14th day of April, 2017.