

Id. Further, a motion to amend the complaint “render[s] moot” a pending motion to dismiss. [Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 956 \(8th Cir. 2002\)](#).

Here, Defendants have not yet answered and this matter has not yet been subject to a progression order. Further, Defendants have not opposed Plaintiff’s Motion to Amend.¹ The court has carefully reviewed the proposed Amended Complaint and finds that amendment would not be futile and is not made in bad faith. Rather, the proposed Amended Complaint clarifies the claim made and is more specific regarding the named Defendants against whom relief is sought. The Motion to Amend is therefore granted. Further, in accordance with [NECivR 15.1\(b\)](#), the court will consider the amended pleading as superseding, rather than as supplemental to, the original Complaint. In light of the filing of the amended complaint, Defendant Hayward’s Motion to Dismiss (filing no. [13](#)) is denied as moot. However, the Motion to Dismiss may be renewed in response to Plaintiff’s Amended Complaint.²

IT IS THEREFORE ORDERED that:

1. Plaintiff’s Motion for Leave to Amend (filing no. [9](#)) is granted. The Amended Complaint supersedes the previous Complaint. The Clerk of the court is

¹The court notes that Plaintiff filed a second Motion for Amended Complaint on October 7, 2009. (Filing No. [16](#).) Defendant Hayward does oppose this Motion. (Filing No. [17](#).) However, the court will deny the second Motion for Amended Complaint because it is a duplicative request.

²The court reminds Defendant Hayward that it has already determined that Plaintiff has set forth enough allegations to “nudge” his claims “across the line from conceivable to plausible,” the same standard used to resolve a motion to dismiss. [Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 \(2007\)](#).

directed to file the proposed Amended Complaint contained in filing no. 9 as a separate document in this matter.

2. On the court's own motion, Defendant Hayward shall respond to the Amended Complaint by filing an answer or other responsive pleading no later than January 4, 2010.

3. Plaintiff's Motion for Summons (filing no. [10](#)) is granted. The Clerk of the court is directed to issue the summons directed to Rob Jackson.

4. Plaintiff's Motion for Leave to Amend (filing no. [16](#)), and "Appeal Notice" (filing no. [15](#)) are denied as moot.

5. Defendant Hayward's Motion to Dismiss (filing no. [13](#)) and Motion to Strike (filing no. [17](#)) are denied as moot.

6. The Clerk of the court is directed to set a pro se case management deadline in this case with the following text: January 4, 2010: Defendant Hayward's answer or other responsive pleading due.

December 14, 2009.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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