

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL CASE NO. 1:12-cv-00388-MR**

**WILLIAM N. DEVLIN and wife** )  
**CARRIE LUCKSAVAGE,** )  
 )  
 ) **Plaintiffs,** )  
 )  
 )  
 ) **vs.** )  
 )  
 )  
**WELLS FARGO BANK, N.A.,** )  
 )  
 ) **Defendant.** )  
\_\_\_\_\_ )

**ORDER**

**THIS MATTER** is before the Defendant’s Motion to Dismiss [Doc. 4] and the Plaintiff’s Motion to Amend Complaint [Doc. 6].

The Defendant has moved to dismiss the Plaintiff’s Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil procedure. [Doc. 4]. In response, the Plaintiff filed the present Motion to Amend Complaint [Doc. 6]. The Defendant opposes the Plaintiff’s Motion to Amend, arguing that any such amendment would be futile. [Doc. 9].

A party may amend its pleading once as a matter of course within 21 days after service of a motion under Rule 12(b). Fed. R. Civ. P.

15(a)(1)(B). As such, the Plaintiff does not require leave of Court in order to file an Amended Complaint.

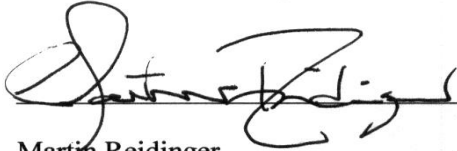
Upon the filing of an Amended Complaint, the Defendant's pending Motion to Dismiss will be rendered moot. The Defendant has the right to renew such motion once the Amended Complaint is filed.

**IT IS, THEREFORE, ORDERED** that the Plaintiff's Motion to Amend Complaint [Doc. 6] is **DENIED AS MOOT**. The Plaintiff shall file its Amended Complaint within fourteen (14) days of the entry of this Order.

**IT IS FURTHER ORDERED** that the Defendant's Motion to Dismiss [Doc. 4] is **DENIED AS MOOT**. The Defendant may renew its Motion to Dismiss upon service of the Amended Complaint.

**IT IS SO ORDERED.**

Signed: August 12, 2013

  
Martin Reidinger  
United States District Judge

