

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:10cv565**

**FLOYD LEE BROWN, by and through )  
his Guardian Ad Litem, Anthony )  
Giordano, )**

**Plaintiff, )**

**Vs. )**

**ORDER**

**ANSON COUNTY; ROBERT LUTHER )  
POPLIN, JR., in his individual capacity; )  
SHERIFF TOMMY ALLEN, in his )  
individual and official capacities; )  
SHERIFF JAMES SELLERS, in his )  
individual and official capacities; JOHN )  
and JANE DOES 1-10, in their individual )  
capacities; and RICHARD and )  
ROBERTA ROES 1-10, in their individual )  
capacities, )**

**Defendants. )**

**THIS MATTER** is before the court on Defendants Anson County’s, Robert Poplin, Jr.’s, Tommy Allen’s, and James Sellers’s Partial Motion to Dismiss (#6). After such motion was filed on December 15, 2010, plaintiff filed its Amended Complaint(#18) on May 5, 2011. By amendment, the Partial Motion to Dismiss (#6) is moot as a matter of law. Young v. City of Mount Ranier, 238 F. 3d 567, 573 (4th Cir. 2001) (“[t]he general rule ...is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect); Taylor v. Abate, 1995 WL 362488, \*2 (E.D.N.Y.1995)<sup>1</sup> (“Defendants' motion to dismiss is addressed solely to the original complaint... Consequently, upon the filing of the amended complaint, their motion is mooted and, therefore, denied.”); In re Colonial Ltd.

---

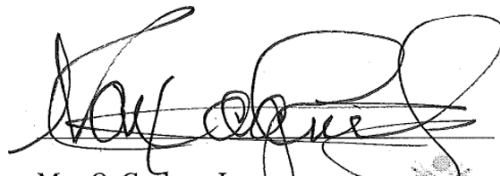
<sup>1</sup> Due to the limits of ECF, copies of unpublished decisions cited in this Order are incorporated into the court record through reference to the Westlaw citation.

Partnership Litig., 854 F.Supp. 64, 80 (D.Conn.1994) (noting where “a plaintiff amends its complaint while a motion to dismiss is pending” the court may “deny[ ] the motion as moot”); Rathke v. HCA Management Co., Inc., 1989 WL 161431, at \*1 n. 1 (D.Kan.1989) (holding that “motion to dismiss … became moot when plaintiff filed an amended complaint”); Gresham v. Waffle House, Inc., 586 F.Supp. 1442, 1444 n. 1 (N.D.Ga.1984) (same). The motion will be denied without prejudice as moot.

### ORDER

**IT IS, THEREFORE, ORDERED** that the moving defendants’ Partial Motion to Dismiss (#6) is **DENIED** without prejudice as moot.

Signed: May 24, 2011



Max O. Cogburn Jr.  
United States District Judge