

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:17-CV-00138-RJC-DSC**

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| DON BRADLEY WALLACE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| |) | |
| Defendant. |) | |

ORDER

THIS MATTER is before the Court on “Defendant’s Motion to Dismiss” (document #6) filed May 22, 2017, and pro se Plaintiff’s “Motion to Amend Complaint” (document #7) filed June 2, 2017. This matter was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1).

Rule 15 of the Federal Rules of Civil Procedure governs amendments to pleadings. Rule 15(a)(1) grants a party the right to “amend its pleading once as a matter of course,” if done within twenty-one (21) days after serving the pleading, Fed. R. Civ. P. 15(a)(1)(A), or “if the pleading is one to which a responsive pleading is required,” a party may amend once as a matter of course, provided that it does so within “21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1)(B). The Rule further provides that leave to amend shall be freely given “when justice so requires.” Id.

Defendant filed its Motion to Dismiss on May 22, 2017. Plaintiff filed his Motion to Amend on June 2, 2017, which is within twenty-one (21) days of the filing of the Motion to Dismiss. Therefore, he may amend his pleading as a matter of course under Rule 15(a)(1)(B).


It is well settled that an amended pleading supersedes the original pleading, and that motions directed at superseded pleadings are to be denied as moot. Young v. City of Mount Ranier, 238 F. 3d 567, 573 (4th Cir. 2001) (amended pleading renders original pleading of no effect); Turner v. Kight, 192 F. Supp. 2d 391, 397 (D. Md. 2002) (denying as moot motion to dismiss original complaint on grounds that amended complaint superseded original complaint).

IT IS THEREFORE ORDERED that:

1. “Defendant’s Motion to Dismiss” (document #6) is administratively **DENIED** as moot without prejudice.
2. Plaintiff’s “Motion to Amend Complaint” (document #7) is **GRANTED**. Plaintiff shall file his Amended Complaint within fifteen (15) days of this Order.
3. The Clerk is directed to send copies of this Order to counsel for the parties, including but not limited to moving counsel; and to the Honorable Robert J. Conrad, Jr.

SO ORDERED.

Signed: June 5, 2017



David S. Cayer
United States Magistrate Judge

