IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TERESA L. O'MALLEY, Plaintiff, v. NAPHCARE, INC. Defendant.	:	Case No. 3:12-cv-326 : JUDGE WALTER H. RICE MAGISTRATE JUDGE MICHAEL J. NEWMAN

DECISION AND ENTRY ADOPTING THE REPORT AND RECOMMENDATIONS OF THE MAGISTRATE JUDGE (DOC. #21); OVERRULING AS MOOT, WITHOUT PREJUDICE TO RENEWAL, DEFENDANT NAPHCARE, INC'S MOTION TO DISMISS (DOC. #7); PLAINTIFF'S MOTION TO AMEND FIRST AMENDED COMPLAINT (DOC. #23) SUSTAINED.

Pending before the Court are several motions in the above-captioned case. Plaintiff Teresa L. O'Malley originally filed suit against her former employer, Defendant NaphCare, Inc., on October 9, 2012, alleging wrongful termination, libel, and slander. Plaintiff invoked the Court's jurisdiction based on diversity of the parties' citizenship. Doc. #3; *See* 28 U.S.C. §1332(a)(1). At that time, Plaintiff was proceeding *pro se*.

On December 28, 2012, Defendant filed a Motion to Dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Doc. #7. Plaintiff filed a

Response (Doc. #10) to Defendant's Motion on January 22, 2013, and Defendant filed a Reply (Doc. #12) on February 4, 2013.

Two days later, on February 6, 2013, Plaintiff filed a Motion for Leave to File a First Amended Complaint. Doc. #13.

On March 27, 2013, Attorney Adam Grant Anderson entered a Notice of Appearance on behalf of the Plaintiff. Doc. #19.

Magistrate Judge Michael J. Newman filed a Report and Recommendations (Doc. #21) on April 9, 2013. Judge Newman sustained Plaintiff's Motion to Amend (Doc. #13), and recommended that the Court deny as moot, and without prejudice to renewal, Defendant's pending Motion to Dismiss (Doc. #7) because it was directed at Plaintiff's original complaint. Judge Newman also directed Plaintiff, with the assistance of her newly retained counsel, to file a new amended complaint. Doc. #21 at 2.

Plaintiff complied, and subsequently filed a Motion to Amend on April 17, 2013, with an attached Second Amended Complaint. Doc. #23.

Under Rule 15(a)(2), this Court should "freely give leave" to amend "when justice so requires." Therefore, the Court SUSTAINS Plaintiff's second Motion to Amend (Doc. #23). Her Second Amended Complaint is attached to the Motion to Amend as Exhibit 1. Doc. #23-1.

The Court agrees with the Magistrate Judge that Plaintiff's original complaint has been superseded by the amended versions, thereby mooting Defendant's original Motion to Dismiss. The Court, therefore, ADOPTS the

Magistrate Judge's Report and Recommendations (Doc. #21) and OVERRULES AS MOOT, and WITHOUT PREJUDICE TO RENEWAL, Defendant's Motion to Dismiss (Doc. #7).

Date: July 8, 2013

WALTER H. RICE
UNITED STATES DISTRICT JUDGE