

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JOSEPH M. SCHAFFER, JR.,

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Plaintiff,

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V.

1:17-cv-297-RP

WENDY ALEXANDER, STEVE UTLEY,
TOBEY LANTHAM, MICHAEL W. ZIENTZ,
LSF9 MASTER PARTICIPATION TRUST, and
MACKIE WOLF ZIENTZ & MANN, P.C.,

Defendants.

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ORDER

Before the Court is Plaintiff Joseph M. Schaffer, Jr.’s Notice of Plaintiff’s Filing First Amended Verified Petition in Response to Defendant U.S. Bank Trust, N.A.’s Motion for Judgment on the Pleadings. (Dkt. 13). Plaintiff asserts that, under Fifth Circuit authority, Defendant’s Rule 12(c) motion for judgment on the pleadings must be considered a Rule 12(b)(6) motion, thus enabling him to amend his pleadings as a matter of course under Rule 15(a)(1)(B).

The cited authority does not stand for that proposition, however. The cases merely establish that Rule 12(c) motions are analyzed under the same standard as motions under Rule 12(b)(6). *See Great Plains Trust v. Morgan Stanley Dean Witter*, 313 F.3d 305, 313–14 (5th Cir. 2002) (noting a case in which consideration of other documents was held to convert 12(b)(6) motion into a 12(c) motion, not the converse); *Doe v. Myspace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008) (“A motion for judgment on the pleadings under rule 12(c) is subject to the same standard as a motion to dismiss under Rule 12(b)(6).”). Thus, Defendant’s Rule 12(c) motion does not trigger a right to amend as a matter of course under Rule 15. *See* Fed. R. Civ. P. 15(a)(1)(B) (allowing amendment as of right within 21 days of service of responsive pleading or motion under Rule 12(b), (e), or (f)). Plaintiff does not

otherwise demonstrate that his amendment is proper under Rule 15(a)(2), which requires the consent of the opposing party or leave of court.

In the interest of judicial economy, however, the Court will construe Plaintiff's Notice as a motion for leave to amend and **GRANT** the motion. In light of the amendments, the Court **DISMISSES AS MOOT** Defendant's Motion for Judgment on the Pleadings. (Dkt. 10). Defendant may file a revised motion in the event that Plaintiff's amendments have not addressed the issues raised in its earlier motion.

Additionally, Defendants removed this case to this Court on April 6, 2017. But contrary to the Local Rules, the parties have not yet submitted a proposed scheduling order. *See* W.D. Tex. Loc. R. CV-16(c) (not later than 60 days after any appearance of any defendant, the parties shall submit a proposed scheduling order to the court).

Accordingly, the Court **ORDERS** the parties to file a proposed scheduling order **on or before August 10, 2017**. The Court admonishes the parties that a failure to comply with this order may result in dismissal of this action for want of prosecution. *See* FED. R. CIV. P. 41(b); *Larson v. Scott*, 157 F. 3d 1030, 1031 (5th Cir. 1998); *Boudwin v. Graystone Ins. Co.*, 756 F. 2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)).

SIGNED on July 27, 2017.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE