

employees engaged in commerce or the production of goods for commerce (individual coverage), or employed in an enterprise engaged in commerce or in the production of goods for commerce (enterprise coverage).

Id. at 3-4.

In his response, Tovar argues his amended complaint more specifically pleads the facts to support allegations that the FLSA applies to Defendants. Docket no. 14 at 4. He argues he has “alleged detailed facts about his duties that support individual coverage under the FLSA, Plaintiff has also alleged facts regarding Defendants’ related activities and operations that indicate his claims for relief under the FLSA are also facially plausible under enterprise coverage.” *Id.* Plaintiff also points out that, in their answer to the original complaint, Defendants admit that “Defendant Luna Car Center, LLC is ‘a Domestic Limited Liability Company in Texas engaging in commerce and subject to the FLSA.’” *Id.* at 7.

Courts have held that a pending Rule 12(b)(6) becomes moot when a plaintiff files an amended complaint as a matter of course. *See Merritt v. Fogel*, 349 F. App'x 742, 745 (3d Cir. 2009) (citing *Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir. 2002); *see also Melson v. Vista World Inc. & Associates*, No. CIV.A. 12-135, 2012 WL 6002680, at *12 (E.D. La. Nov. 30, 2012); *ABB, Inc. v. Reed City Power Line Supply Co.*, No. 1:07-CV-420, 2007 WL 2713731, at *1 (W.D. Mich. Sept. 18, 2007) (collecting cases); *but see Roller Bearing Co. of America, Inc. v. American Software, Inc.*, 570 F.Supp.2d 376, 384 (D. Conn. 2008) (“When a plaintiff amends its complaint while a motion to dismiss is pending” courts may deny the motion to dismiss as moot or consider the merits of the motion to dismiss in light of the amended complaint). Especially given the substantive changes in the amended complaint, including more specific facts about the FLSA’s applicability to Defendants that may go to the heart of the motion to dismiss, the Court finds Defendants’ motion to dismiss is moot.

For the above reasons, the Court DISMISSES AS MOOT Defendants' motion to dismiss for failure to state a claim (docket no. 9).

It is so ORDERED.

SIGNED this 29th day of June, 2015.

A handwritten signature in black ink, appearing to read 'Xavier Rodriguez', written over a horizontal line.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE