

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MATTHEW J. KALLIN and
REBECCA A. WATTS-KALLIN,

Plaintiffs,

v.

JP MORGAN CHASE BANK, N.A.,

Defendant.

Case No. 17-CV-1807-JPS

ORDER

Defendant filed a motion to dismiss the complaint on April 6, 2018. (Docket #14). Plaintiffs both responded to the motion and simultaneously filed an amended complaint, as Federal Rule of Civil Procedure 15(a) permits them to do. (Docket #15, #16); Fed. R. Civ. P. 15(a)(1)(B). The filing of an amended complaint nearly always moots a motion to dismiss the original complaint. *See Massey v. Helman*, 196 F.3d 727, 735 (7th Cir. 1999) (“[W]hen a plaintiff files an amended complaint, the new complaint supersedes all previous complaints and controls the case from that point forward.”); 6 Wright, Miller & Kane, Fed. Prac. & Proc. § 1476 (3d ed. 2018). The only exception arises in limited instances where the substance of the two complaints remains the same, *see Avina v. Bohlen*, 882 F.3d 674, 676 (7th Cir. 2018), but the Court’s review of the original and amended complaints in this case shows that exception would not apply here. To the extent some alleged deficiencies from the original complaint remain in the amended complaint, Defendant can reincorporate those arguments into a motion to dismiss the amended complaint. Consequently, the Court will deny Defendant’s motion to dismiss the original complaint without prejudice.

Additionally, Defendant and Plaintiffs agree that Defendant should have an extension of time to respond to the amended complaint. (Docket #18). The Court will adopt the parties' agreed-upon extension. Fed. R. Civ. P. 6(b)(1)(A). The parties also suggest that Plaintiffs should have "an additional two weeks for any necessary response to the defendant's filing," *id.* at 1, but if Defendant files a motion to dismiss, Plaintiffs would be afforded three weeks, not two, *see* Civ. L. R. 7(b). To the extent Plaintiffs may need an extension of time to respond to a renewed motion to dismiss, leave for the same can be sought at the appropriate juncture.

Accordingly,

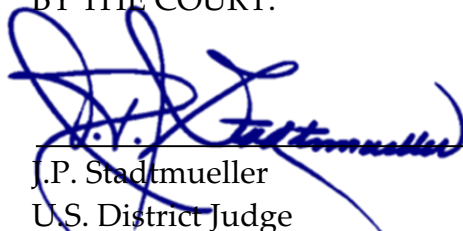
IT IS ORDERED that Defendant's motion to dismiss the original complaint (Docket #14) be and the same is hereby **DENIED as moot** and without prejudice;

IT IS FURTHER ORDERED that Defendant's unopposed motion for an extension of time (Docket #18) be and the same is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Defendant shall answer or otherwise respond to the amended complaint (Docket #16) no later than **May 31, 2018**.

Dated at Milwaukee, Wisconsin, this 14th day of May, 2018.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge