

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

SCHYLER Z. GRODMAN, M.D.,

Plaintiff,

v.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER and DR. SAMER
ZAID-KAYLANI,

Defendants.

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Civil Action No. 5:23-cv-00210-H

PLAINTIFF’S RESPONSE TO DEFENDANT’S PARTIAL MOTION TO DISMISS

Plaintiff Schyler Grodman, M.D. (“Grodman”) files this Response to Defendant Texas Tech University Health Sciences Center’s Partial Motion to Dismiss, and hereby states as follows:

I. SUMMARY

1. Plaintiff filed his First Amended Complaint (“Amended Complaint”) [ECF No. 10] after Defendant filed its Partial Motion to Dismiss Plaintiff’s Original Complaint and within the time permitted, as amended by various extensions by this Court, under Federal Rule of Civil Procedure 15.¹ Plaintiff’s Amended Complaint removes the causes of action upon which Defendant brought its Partial Motion to Dismiss. Accordingly, Plaintiff asks that the Court deny Defendant’s Motion to Dismiss as moot.

II. ARGUMENT AND AUTHORITIES

2. Plaintiff filed its Original Complaint on September 07, 2023, alleging violations of the Americans with Disabilities Act (ADA), Texas Commission on Human Rights Act (TCHRA),

¹ Plaintiff’s Amended Complaint was filed with consent from opposing counsel, pursuant to FRCP Rule 15(a)(2) (“A party may amend its pleading . . . with the opposing party’s written consent.”).

and Rehabilitation Act. [ECF No. 1]. Defendant filed its Partial Motion to Dismiss on October 04, 2023, alleging lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) for Plaintiff's ADA and TCHRA claims based on sovereign immunity. [ECF No. 5]. On October 19, 2023, Plaintiff filed two Unopposed Motion for Extension of Time to Respond to Defendant's Partial Motion to Dismiss, caused by various conflicting proceedings, hearings, and mediations, [ECF No. 6, 8], both of which were granted, [ECF No. 7, 9]—resulting in response deadline of November 22, 2023.

3. In compliance with the Court's deadline, and in response to Defendant's Partial Motion to Dismiss, Plaintiff filed its Amended Complaint on November 22, 2023. [ECF No. 10]. Plaintiff's Amended Complaint removes the causes of action which Defendant moved to dismiss (Plaintiff's ADA and TCHRA claims).

4. "Many district courts - including [those in this Circuit] - routinely deny as moot motions to dismiss that are filed prior to an amendment of a complaint." *Rodgers v. Gusman*, No. 16-16303, 2019 WL 186669, at *2 & n.16 (E.D. La. Jan. 14, 2019) (collecting cases); see also *Garcia v. City of Amarillo, Texas*, No. 2:18-CV-95-D-BR, 2018 WL 6272461, at *1 (N.D. Tex. Oct. 29, 2018) ("[A]n amended complaint, which supersedes the original complaint as the operative live pleading, renders moot a motion to dismiss the original complaint."); *Xtria, LLC v. Int'l Ins. Alliance Inc.*, No. 3:09-CV-2228-D, 2010 WL 1644895, at *2 (N.D. Tex. Apr. 22, 2010); *Probado Technologies Corp. v. Smartnet, Inc.*, No. C-09-349, 2010 WL 918573, at *1 (S.D. Tex. Mar. 12, 2010). And while a court may apply a pending Rule 12 motion to a newly amended complaint, it should nonetheless deny the pending motion as moot if that application "would cause confusion or detract from the efficient resolution of the issues...." *Rodgers*, 2019 WL 186669, at

*2 (In that situation, “it makes sense to require the defendant to file a new motion specifically addressing the amended complaint.”).

5. Because Plaintiff’s Amended Complaint removed the causes of action upon which Defendant moves for dismissal (Plaintiff’s ADA and TCHRA claims), there is no reason for the Court or the parties to spend additional resources briefing or arguing the motion. Accordingly, Plaintiff asks the Court to deny Defendant’s Partial Motion to Dismiss as moot.

III. PRAYER FOR RELIEF

6. THEREFORE, Plaintiff prays that the Court deny Defendant’s Partial Motion to Dismiss as moot, and that Plaintiff recovers all such other and further relief to which it may be entitled. Additionally, to the extent the Court finds that any portion of Plaintiff’s Amended Complaint is deficient, Plaintiff requests leave to amend its complaint to remedy any defects.

Date: November 22, 2023

Respectfully Submitted,

/s/ Jeffrey M. Tillotson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing motion was electronically filed with the Clerk of the Court using the CM/ECF system on November 22, 2023.

/s/ Jeffrey M. Tillotson

Jeffrey M. Tillotson