

**United States District Court
Northern District of Georgia
Gainesville Division**

**Fair Fight, Inc., Scott Berson, Jocelyn
Heredia, and Jane Doe,**

*Plaintiffs and
Counter-Defendants,*

v.

**True the Vote, Inc., Catherine
Engelbrecht, Derek Somerville, Mark
Davis, Mark Williams, Ron Johnson,
James Cooper, and John Does 1-10,**

*Defendants
and Counter-Plaintiffs,*

Fair Fight Action, Inc.,
Counter-Defendant.

Civ. No. 2:20-cv-00302-SCJ

Hon: Steve C. Jones

Suggestion of Mootness

Counter-Plaintiffs respectfully suggest to this Court that Counter-Defendants' Motion to Dismiss Defendants' Counterclaims, ECF No. 48, is now moot.

On March 22, 2021, Plaintiffs filed their First Amended Complaint for Declaratory and Injunctive Relief. ECF No. 73. Once an amended complaint is filed, “the original pleading no longer performs any function in the case and any subsequent motion made by an opposing party should be directed at the amended pleading.” [*Reams v. GK Rest., LLC*](#), No. 3:13-CV-1446-J-39JBT, 2015 WL 13735449, at *2 (M.D. Fla. July 21, 2015) (citing 6 Charles Alan Wright et al., Federal Practice & Procedure § 1476 (3d ed. 2010)). An amended complaint supersedes the initial complaint and “becomes the operative pleading in the case.” [*Lowery v. Alabama Power Co.*](#), 483 F.3d 1184 (11th Cir. 2007). Likewise, the Counterclaims stated in [original answer] “are no longer operative. That determination renders moot Plaintiff’s [previous motion to dismiss], which is directed at Counterclaims that are no longer operative.” *Reams*, 2015 WL 13735449, at *2.

A counterclaim is part of a responsive pleading. *See* Fed. R. Civ. P. 13(a) (“A pleading must state as a counterclaim any claim that... [is compulsory.]”). Counter-Plaintiffs’ counterclaim here is compulsory and as such, was required to be included in [Defendants’] answer to Plaintiffs’ Amended Complaint. Counter-

Plaintiffs did not seeking to *amend* a counterclaim, but merely asserted their counterclaim against Plaintiffs' amended complaint, which is now the operative pleading in this case. As such, Plaintiffs' previous motion to dismiss is rendered moot by their amended complaint and the responsive pleadings thereto.

Defendants' counsel has advised Plaintiffs of their position that the previously-filed motion to dismiss is moot. Plaintiffs' counsel disagrees.

Dated: April 2, 2021

Respectfully Submitted,

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Certificate of Compliance

The undersigned counsel certifies that the foregoing has been prepared in Times New Roman (14 point) font, as required by the Court in Local Rule 5.1(B).

Respectfully submitted on April 2, 2021

SMITH & LISS, LLC

/s/ Ray S. Smith, III

Ray S. Smith, III

Georgia Bar No. 662555

Local Counsel for Defendants

Certificate of Service

I hereby certify that the foregoing document was served electronically on April 2, 2021, upon all counsel of record via the United States District Court for the Northern District of Georgia, electronic filing system.

/s/ Ray S. Smith, III

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Georgia Bar No. 662555

Local Counsel for Defendants