

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

TROPICAL CHILL CORP., ET AL.,

Plaintiffs,

v.

HON. PEDRO R. PIERLUISI URRUTIA,
IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF THE
COMMONWEALTH OF PUERTO RICO,
ET AL.,

Defendants.

Civil No. 21-1411 (RAM)

**Motion to Deem Motion to Dismiss Moot or, in the Alternative,
for Final Extension of Time to Oppose It**

The plaintiffs, Tropical Chill Corp., Eliza Llenza, Yasmin Vega, and Rene Matos (collectively, "Plaintiffs") respectfully move this Court to deem the defendants' motion to dismiss (ECF No. 18) moot in light of the amended complaint, ECF No. 35. Alternatively, Plaintiffs move this Court for a final enlargement of the deadline to respond to the motion to dismiss.

Yesterday, as this Court knows, Plaintiffs filed an amended complaint as a matter of course (within 21 days of the defendants' motion to dismiss). *See* Fed. R. Civ. P. 15(a)(1)(B). They did so because Ms. Alexandra Irizarry, a former plaintiff, instructed the undersign to drop her as a plaintiff. But she specifically told us that she wanted this Court to know that she has agreed to get vaccinated against her will because she was under

duress. The uncertainty of being unable to obtain the health certificate and thus losing her job, she explained, provoked so much stress and anxiety that she succumbed.

The undersigned had to scramble to find a new plaintiff with natural immunity. And through the amended complaint, Plaintiff Eliza Llenza was added. We also updated and supplemented the statistical evidence and scientific studies.

Procedurally speaking, then, “the earlier complaint is a dead letter and ‘no longer performs any function in the case.’” *Connectu LLC v. Zuckerberg*, 522 F.3d 82, 91 (1st Cir. 2008) (quoting *Kolling v. Am. Power Conversion Corp.*, 347 F.3d 11, 16 (1st Cir. 2003)). And the motion to dismiss is thus moot. *See, e.g., Grajales v. Puerto Rico Ports Auth.*, 682 F.3d 40, 45 (1st Cir. 2012) (“The defendants moved to dismiss under Rule 12(b)(6). The district court . . . allowed the plaintiff to file an amended complaint. It then denied the defendants’ Rule 12(b)(6) motion as “moot” . . .”).

Accordingly, under Federal Rule of Civil Procedure 15(a)(3), the defendants have until October 21, 2021 to either answer the amended complaint or renew their motion to dismiss. So it would be a waste of time and judicial resources for Plaintiffs to oppose a motion to dismiss that has become moot. *See generally* Fed. R. Civ. P. 1.

If, however, this Court understands that the motion to dismiss is not moot, Plaintiffs respectfully request a final deadline of two days from the date on which this Court rules on this motion to file their opposition. Good cause exists for the requested extension. Plaintiffs, after all, had no control over Ms. Irizarry’s decision to exit the litigation, which

has complicated things, and which prompted a necessary amended complaint. Finally, the requested extension will neither materially delay the proceedings—the parties have until October 14, 2021 to file their joint motion in compliance, ECF No. 27—nor prejudice the defendants.

For the above reasons, this Court should grant this motion and thus deem the defendants’ motion to dismiss moot. In the alternative, the Court should give the plaintiffs two days from the ruling on this motion to oppose the motion to dismiss.

Dated: October 8, 2021

Respectfully submitted,

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