IN THE CIRCUIT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUTY, FLORIDA

MARCIO SOUSA SALES,

Plaintiff,

CASE NO: 50-2025-CA-000969-XXXA-MB

vs.

ANTONIO DE ANDRADE,

Defendant,

_____/

Plaintiff's Motion to Stay Hearing on Defendant's Motion to Dismiss and to Deny/Strike Defendant's Motion as Moot

Plaintiff, Marcio Sousa Sales, pro se, hereby moves this Court for an Order staying or cancelling the hearing set for April 10, 2025, on Defendant's Motion to Dismiss the original Complaint, and denying or striking that Motion as moot. In support, Plaintiff states as follows:

Introduction & Background

Amended Complaint Superseding Original: After Defendant filed a motion to dismiss the original Complaint, Plaintiff timely filed an Amended Complaint correcting all procedural deficiencies. This Amended Complaint was filed with the Clerk and court-stamped, and a copy was promptly served on Defendant (along with Plaintiff's written Objection to the original motion to dismiss). The defendant thus had timely notice of the Amended Complaint and Plaintiff's position that the motion to dismiss is moot.

Hearing on Original Motion Set Despite Amendment: Notwithstanding the Amended Complaint, a hearing on Defendant's original motion to dismiss remains scheduled for April 10, 2025. Proceeding with that hearing would mean arguing over a superseded pleading that is no longer operative. The plaintiff objects to going forward under these circumstances and brings this Motion to alert the Court to the mootness of the original motion and to preserve judicial resources and fairness.

Argument

1. Amended Complaint Supplants Original Complaint – Original Motion is Moot.

Under Florida law, an amended complaint supersedes and replaces the original complaint, rendering the original of no legal effect. It is black-letter law that "an

original pleading is superseded by an amendment of it" (absent a contrary intention to preserve any portion of the original).

Once a proper amended complaint is filed, the prior complaint is "abandoned" and no longer operative.

Consequently, any motion directed at the original complaint cannot proceed, because the original pleading has been superseded.

Florida's District Courts of Appeal have repeatedly affirmed this principle: In ***Vanderberg v. Rios, 798 So. 2d 806 (Fla. 4th DCA 2001)***, the pro se plaintiff filed an amended complaint before the hearing on a pending motion to dismiss. The Fourth DCA "reverse[d] the dismissal of [the] action because the legal sufficiency of the original complaint was rendered moot by the filing of the amended complaint."

The appellate court made clear that once the plaintiff amended, the trial court had no basis to adjudicate the original complaint's sufficiency. It held that the filing of the amended complaint nullified the original pleading and, accordingly, mooted the motion aimed at the original. In ***Forum v. Boca Burger, Inc., 788 So. 2d 1055 (Fla. 4th DCA 2001)***, the plaintiff filed an amended complaint on the morning of the scheduled dismissal hearing. The trial court refused to recognize the amendment and

dismissed the original complaint. The Fourth DCA reversed, ruling that the lower court erred in refusing to accept the amended complaint filed before any responsive pleading, and that the court had "no discretion to refuse… the new pleading" under these circumstances.

Because no responsive pleading had been served (a motion to dismiss "is not a 'responsive pleading'"(citing Fla. R. Civ. P. 1.100(a))), the plaintiff had an absolute right to amend once, per Fla. R. Civ. P. 1.190(a). The amendment rendered the original motion to dismiss legally irrelevant. Indeed, the Fourth DCA not only reinstated the case on the amended complaint but also awarded attorney's fees against the defendant for persisting with a baseless motion (see Section 4 below).

Decades earlier, in ***Rice v. Clement, 184 So. 2d 678 (Fla. 4th DCA 1966)***, and ***Shannon v. McBride, 105 So. 2d 16 (Fla. 2d DCA 1958)***, Florida appellate courts recognized that a proper amended pleading supersedes the original. As the First DCA later summarized: "when an original complaint has been superseded by an amended complaint, the original complaint can no longer furnish a basis for [any relief or ruling]." In other words, the case must proceed on the amended complaint alone.

More recently, Florida courts continue to hold the same. In ***D'Anna v. Ackerman, 251 So. 3d 194 (Fla. 4th DCA 2018)***, although involving an amended charging lien, the Fourth DCA emphasized that the amendment "rendered moot [the] pending motion" directed at the original filing, and it was error for the lower court to rule on the original matter post-amendment. Likewise, the Fifth DCA has reiterated that an order or proceeding based on a superseded complaint is moot: "We dismiss this appeal as moot because the … order on appeal is based on a complaint that was superseded by the filing of an amended complaint." (emphasis added). See also ***Falcone v. Laquer, 132 So. 3d 1171, 1171–72 n.1 (Fla. 3d DCA 2014)*** (appeal from order on original complaint became moot when a new complaint was filed) ***Fin. Impact Estimating Conf. v. Floridians Protecting Freedom, Inc., 390 So. 3d 758, 760 (Fla. 1st DCA 2024)*** (case moot because order on review was based on a pleading that is "no longer operative"); ***Wilner Hartley & Metcalf, P.A. v. Howard & Assocs., 65 So. 3d 620, 621 (Fla. 1st DCA 2011)*** (nonfinal order denying a motion became moot when an amended complaint was allowed, replacing the original).

In short, the filing of Plaintiff's Amended Complaint supplanted the original complaint entirely. The Amended Complaint is now the operative pleading in this

case, and the Court cannot properly adjudicate a motion attacking a complaint that is no longer before the Court.

Accordingly, the Defendant's motion to dismiss the original complaint is moot and should be denied or stricken on that basis alone.

2. **Proceeding with the April 10 Hearing Would Be Prejudicial and Wasteful, as the Original Motion Addresses a Non-Existent Pleading.**

Allowing April 10, 2025, hearing to proceed on the original motion to dismiss would serve no legitimate purpose and would severely prejudice the Plaintiff (as well as squander judicial resources). Since the original complaint has been replaced by the Amended Complaint, any arguments about deficiencies in the original pleading are academic – they present a classic moot issue that courts should not spend time on Florida courts do not adjudicate moot issues, and appeals have even been dismissed as moot when based on a superseded complaint It would be equally improper to hold a trial court hearing on a motion founded on a superseded pleading. Proceeding despite the amendment would prejudice Plaintiff by effectively ignoring the improvements and corrections Plaintiff made in the Amended Complaint. The plaintiff has cured the procedural deficiencies that Defendant complained about. To

Nonetheless the entertainment dismissal of the (now non-existent) original complaint would deprive Plaintiff of a fair opportunity to have his actual, operative pleading heard on the merits. This is analogous to the error in Vanderberg, where the trial court dismissed an original complaint that had already been amended; the appellate court reversed and reinstated the case, recognizing the prejudice in dismissing a moot pleading.

Moreover, moving forward with the hearing would waste judicial time and effort. It serves no purpose for the Court to consider arguments for a defunct version of the complaint when a new pleading is on file. Judicial economy is not served by holding a hearing on issues that have been overtaken by events (here, overtaken by the Amended Complaint). Instead, the proper course is to focus on the Amended Complaint, which is the only live pleading. The Florida Rules of Civil Procedure explicitly encourage courts and parties to move cases forward on the amended pleadings rather than get bogged down on prior iterations. Rule 1.190, for example, envisions that amendments should be "freely" allowed in the interest of justice, and once an amendment is made, the case proceeds on that new pleading (with the opposing party responding anew). It would undercut the spirit of Rule 1.190 to penalize a litigant for amending by still adjudicating the superseded pleading. In

sum, it would be fundamentally unfair and inefficient to hold the April 10 hearing. The original motion to dismiss is addressing a pleading that is no longer before this Court; any order on such a motion would have no practical effect except to confuse the record and potentially cause improper dismissal of a case that is now proceeding on a different complaint. Plaintiff respectfully submits that the Court should avoid this prejudicial and pointless exercise by cancelling or staying the April 10 hearing.

3. The Amended Complaint Was Properly Served and Must Be Considered on its Merits (Defendant Has Notice and Must Respond to the Amended Complaint).

There is no dispute that Plaintiff's Amended Complaint was properly filed and served. The plaintiff provided Defendant with a file-stamped copy of the Amended Complaint and the Objection to the motion to dismiss well in advance of the scheduled hearing. The defendant cannot credibly claim lack of notice. In fact, in ***Forum v. Boca Burger,*** the defense admitted at the hearing that it was aware an amended complaint had been filed that morning (even discussing it with new opposing counsel) yet still proceeded with the motion on the original complaint. The trial judge in that case erroneously entertained the original motion, but the appellate court made clear this was improper. Once an amended complaint is served,

The defendant is on notice that it must address the new pleading instead of the old. Here, Defendant has had the Amended Complaint for some time and even received Plaintiff's objection outlining that the original motion is moot. Thus, the Defendant should already be preparing a response to the Amended Complaint (whether that be an answer or a new motion directed at the Amended Complaint's contents). What Defendant should not do is attempt to rush to get the original motion heard or granted before the Court considers the Amended Complaint. Florida procedure affords defendants a fair opportunity to respond to an amended complaint (indeed, the Fourth DCA in Vanderberg noted that after reinstatement "the defendants may either file an answer or a motion to dismiss directed to the amended complaint"). Defendant will suffer no legitimate prejudice by having to respond to the Amended Complaint on the merits – this is the normal course of litigation. By contrast, Plaintiff would suffer extreme prejudice if the Court were to ignore the Amended Complaint and rule on an outdated motion. To the extent Defendant may argue that the Amended Complaint is "not much different" or did not cure certain issues, that argument still must be addressed via a motion directed at the Amended Complaint (or at least by supplementing the existing motion with respect to the new pleading). The law is clear that the original motion does not carry over automatically to the

amended pleading, because an amended complaint may change the landscape of the claims or defenses. Even if some arguments might ultimately apply to the Amended Complaint, the proper and fair procedure is for Defendant to file a new or renewed motion to dismiss targeting the Amended Complaint specifically (if Defendant believes grounds still exist), and for Plaintiff to then respond to that in due course. What is not proper is to pretend the amendment never happened and ambush Plaintiff by proceeding on a motion that doesn't account for the updated allegations. That would violate basic notice and due process principles, as Plaintiff's current pleading would never be addressed. Therefore, Plaintiff respectfully asks the Court to hold Defendant to its obligation to respond to the active pleading. The Court should decline to hear or decide the old motion and instead require that the case move forward on to the Amended Complaint. This approach ensures procedural fairness (consistent with Fla. R. Civ. P. 1.190) and keeps the focus on the merits of the live claims rather than procedural maneuvering on inoperative ones.

4. Liberal Construction for Pro Se Litigant – Plaintiff's Pleadings Deserve Fair Reading and an Opportunity to Be Heard on the Merits.

As a pro se litigant, Plaintiff is entitled to have his pleadings construed liberally and not held to the same strict standards as pleadings drafted by attorneys. The U.S.

Supreme Court has firmly instructed that allegation in a pro se complaint, "however in artfully pleaded," are to be held "to less stringent standards than formal pleadings drafted by lawyers."(quoting ***Haines v. Kerner, 404 U.S. 519, 520–21 (1972)***). The Eleventh Circuit (whose jurisdiction includes Florida) likewise emphasizes that pro se filings receive a more generous construction than lawyer-drafted papers (***Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998) (per curiam)*** – noting courts should liberally construe pro se litigants' pleadings). What this means in practice is that the Court should be cautious not to penalize Plaintiff for procedural missteps or technical imperfections in his filings. Plaintiff has diligently attempted to follow the rules: upon receiving Defendant's motion pointing out alleged defects, Plaintiff made a good-faith effort to correct those by amending the complaint. This is exactly what a pro se party should be allowed (indeed, encouraged) to do – refine his pleadings to comply with procedural requirements. Rule 1.190, Fla. R. Civ. P., reflects a policy of liberality in amendments ("leave of court shall be given freely when justice so requires"), which is especially important for pro se litigants who might not get everything perfect on the first try. The Court should therefore give full effect to Plaintiff's Amended Complaint and consider it on its merits, liberally construing the allegations in Plaintiff's favor. Dismissing the case without regard to

the amended pleading would contradict the mandate of ***Haines v. Kerner*** and its progeny. In Haines, the Supreme Court reversed a dismissal of a pro se complaint, holding that the plaintiff was entitled to an opportunity to offer evidence in support of his claims, since it was not "beyond doubt" that he could prove no set of facts entitling him to relief. Here, Plaintiff's Amended Complaint presents his claims with corrected procedure, and he is at least entitled to have those allegations heard and tested through proper motions or trial – not summarily discarded because of earlier pleading issues that have now been cured. Florida courts also acknowledge that while pro se litigants must ultimately follow procedural rules, their pleadings should be read with a measure of understanding. See ***Tannenbaum, 148 F.3d at 1263*** (even as to technical matters, courts "liberally construe" pro se filings to discern the substance) In this case, a liberal reading of Plaintiff's filings makes clear that he is not trying to circumvent procedure; rather, he is attempting to comply by amending his complaint as required. This Court should honor that effort by accepting the Amended Complaint as the governing pleading and by not imposing the harsh result of dismissal without considering the amended allegations. Such an approach aligns with the notion of doing justice on the merits rather than disposing of cases on

procedural technicalities – a principle especially pertinent when one party is unrepresented.

5. Judicial Economy and Fair Procedure (Fla. R. Civ. P. 1.190) Warrant Focusing on the Amended Complaint, Not a Moot Hearing.

Florida Rule of Civil Procedure 1.190 exists to facilitate the resolution of cases on their merits by allowing pleadings to be amended when needed. The rule explicitly permits one amendment as of right before a responsive pleading is served (which is exactly what happened here: Plaintiff amended before any answer)

The rule's purpose is to avoid "surprise" or unfairness and to ensure that cases are decided based on an accurate and up-to-date framing of the issues. By correcting his complaint, Plaintiff has availed himself of this rule to address the concerns raised. It would defeat the purpose of Rule 1.190 to ignore that amended pleading. From a judicial economic standpoint, courts have repeatedly emphasized that resources should not be expended on matters that have become moot. Time spent by the Court (and the parties) on April 10, 2025, arguing about a complaint that is no longer operative is time wasted. It delays reaching the actual substance of the dispute and could necessitate further proceedings to unwind any decision improperly made on

the old complaint. For example, if the Court were to grant the motion to dismiss the original complaint (despite the amendment), Plaintiff would promptly have grounds to move for reconsideration or appeal on the basis that an amended complaint was on file – leading to reversal as in Vanderberg and Forum. This would not only prolong the litigation but also burden the appellate court with an easily avoidable issue. It is far more efficient to recognize now that the April 10 hearing is unnecessary and to proceed directly to the next steps on the Amended Complaint. Additionally, Florida's commitment to fair procedure means the Court should not entertain what is essentially an "ambush" tactic. Defendant setting a hearing on a motion it knows is moot (due to the Amended Complaint) smacks of gamesmanship – perhaps hoping the Court might mistakenly dismiss the case before realizing an amendment exists. The Court should not countenance such a strategy. Instead, the Court should prioritize substantive fairness: Plaintiff has fixed the issues; the fair course is to let the case proceed on the fixed complaint, not to permit a "gotcha" dismissal on a superseded pleading. Cancelling the moot hearing upholds the integrity of the process, ensuring that judicial time is spent on live controversies. In sum, staying or cancelling the April 10 hearing is in line with both efficiency and fairness. It prevents a waste of the Court's time and ensures that Plaintiff's case is

heard on the correct footing. Rule 1.190's liberal amendment policy and the overarching principle of resolving cases on the merits strongly support granting the relief requested herein.

6. Bad-Faith Tactics by Defendant Should Not Be Rewarded – Plaintiff Reserves Right to Seek Sanctions Under Fla. Stat. § 57.105.

Plaintiff is mindful that the Court cannot pre-judge the motives of the Defendant, but the circumstances here raise concern that Defendant may be engaging in tactics of delay or denial that border on bad faith. The defendant has been made aware of the Amended Complaint and its legal effect. There is no good-faith basis in law to insist on a hearing for a motion to dismiss a non-existent complaint – as shown above, Florida law is unanimous that such a motion is moot. If Defendant nevertheless presses forward, it suggests an attempt to obtain a quick dismissal on technical grounds, hoping the pro se Plaintiff's amendment will be overlooked. Such conduct is not only improper; it is sanctionable. Florida Statutes § 57.105 authorizes courts to award attorney's fees as a sanction when a party (or counsel) pursues a claim or defense that is not supported by the material facts or then-existing law. Here, the continued pursuit of the motion to dismiss the original complaint – despite the clear fact that an amended complaint has supplanted it – is "not supported by…the

existing laws (since no law permits dismissal of a superseded complaint) and lacks any factual basis once the amendment was filed. In ***Forum v. Boca Burger, Inc***., after the trial court erroneously dismissed the original complaint (ignoring the plaintiff's amendment), the Fourth DCA not only reversed but also granted the plaintiff's motion for § 57.105 fees, finding the defense's position indefensible. The appellate court in that case effectively signaled that pursuing a dismissal in the face of a properly filed amended complaint presented a frivolous position – one so lacking in merit that sanctions were warranted. The same could be said here: continuing to argue a moot point is tantamount to advancing a frivolous motion. Plaintiff, as a pro se party, is not seeking fees at this time (having no attorney's fees), but the principle remains that the Court has tools to curb abuse of process. Plaintiff puts Defendant on notice that if Defendant persists with bad-faith litigation tactics – for example, refusing to stand down on the April 10 hearing or otherwise ignoring the Amended Complaint – Plaintiff will seek all appropriate relief, including possible sanctions under § 57.105 and any other applicable authority. Plaintiff does not make this statement lightly; it is simply that the law expects parties to adjust their litigation posture when circumstances change (such as an amendment to the pleadings). There is no honorable reason for Defendant to refuse to withdraw or deem moot its original

motion under these conditions. Any attempt to argue otherwise can only be seen as a delay tactic or an effort to mislead the Court. By granting the relief requested in this Motion, the Court will also send a message that gamesmanship will not be rewarded. The proper course is for the Defendant to respond to the Amended Complaint in good faith. If, instead, Defendant attempts to short-circuit the process by pushing an irrelevant hearing, the Court's intervention is justified. The plaintiff stands ready to defend his Amended Complaint on the merits against any proper motion the Defendant may file. What Plaintiff seeks to avoid is a scenario where procedural trickery deprives him of that opportunity.

Conclusion and Prayer for Relief

For the foregoing reasons, Plaintiff respectfully requests that this Court:

Stay or cancel the April 10, 2025, Hearing on Defendant's Motion to Dismiss the original Complaint, as that motion is now moot in light of the Amended Complaint.

Deny or Strike Defendant's Motion to Dismiss (directed at the original Complaint) as moot, or alternatively, issue an order recognizing that the motion will not be heard because the original complaint has been superseded (Fla. R. Civ. P. 1.190).

Acknowledge the Amended Complaint (filed March 24, 2025) as the operative pleading. The Plaintiff asks the Court to direct that all future proceedings (and any responsive motions by Defendant) be directed at the Amended Complaint, so that the case can proceed with the merits of that pleading.

Protect Plaintiff's Right to Fair Consideration: In doing so, the Court should reaffirm that Plaintiff, as a pro se litigant, is entitled to have his filings liberally construed (per ***Haines*** and ***Tannenbaum***, supra) and that he will be afforded the chance to support his claims now that procedural defects have been cured.

Reserve on Sanctions if Appropriate: While not seeking a sanctions award at this time, Plaintiff respectfully requests the Court to warn or admonish that further pursuit of plainly moot or frivolous matters (such as insisting on arguing the superseded motion) could trigger sanctions under Fla. Stat. § 57.105. This will discourage any continued bad-faith strategies and encourage the parties to litigate this case on the live issues.

The plaintiff submits that the relief requested is necessary to prevent manifest injustice and to ensure the case proceeds efficiently and justly. The Court's intervention will prevent a waste of judicial time on April 10, 2025, and will

safeguard Plaintiff's right to have his Amended Complaint heard. No party can reasonably object to obeying the well-settled law that an amended complaint nullifies prior motions to dismiss – indeed, to object would contradict decades of Florida jurisprudence. Plaintiff therefore asks that this Motion be GRANTED in full and for such other and further relief as is deemed just and proper.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Plaintiff's Motion to Stay Hearing on Defendant's Motion to Dismiss and to Deny/Strike Defendant's Motion as Moot was served on Antonio de Andrade, at his e-mail tjlmarble@yahoo.com as well his attorney seth@kellergibson.com on this March 27, 2025.

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