

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRETT HENDRICKSON,

Plaintiff,

v.

No. 18-CV-1119 RB-LF

AFSCME COUNCIL 18 et al.,

Defendants.

**UNOPPOSED NOTICE OF WITHDRAWAL OF AFSCME COUNCIL 18'S MOTION
TO DISMISS COUNT II OF THE COMPLAINT**

Pursuant to Local Rule 7.7, Defendant AFSCME Council 18 hereby submits this Unopposed Notice of Withdrawal of its Motion to Dismiss Count II of the Complaint. Dkt. 17.

AFSCME Council 18 filed its Motion to Dismiss on March 1, 2019. Plaintiff's counsel requested, and Defendant's counsel agreed, to extend the time for Plaintiff to file his response to the Motion to Dismiss until April 5, 2019. Dkt. 20. On March 15, 2019, rather than filing a response to the pending motion, Plaintiff opted to amend his Complaint, effectively terminating the motion. Dkt. 21. *See* Fed. R. Civ. P. 15(a)(1)(B). AFSCME Council 18 filed its Answer to Plaintiff's First Amended Complaint on March 29. Dkt. 24. Plaintiff has now filed a "Response in Opposition to Defendant AFSCME Council 18's Motion to Dismiss Count II." Dkt. 25.

Despite the fact that there is no renewed motion to dismiss the First Amended Complaint pending at this time, Plaintiff refers to the First Amended Complaint throughout his Opposition.

"An amended complaint . . . render[s] moot the defendants' motion[] to dismiss." *Polger v. Republic Nat'l Bank*, 709 F. Supp. 204, 206 (D. Colo. 1969); *see also Strich v. United States*, No. 09-cv-01913-REB-KLM, 2010 WL 148269, at *1 (D. Colo. Jan. 11, 2010) ("The filing of an amended complaint moots a motion to dismiss directed at the complaint that is supplanted and superseded.").

Here, Plaintiff's FAC superseded his Complaint (Dkt. 1) and mooted AFSCME Council 18's Motion to Dismiss, which was directed at the Complaint. However, out of an abundance of caution, Defendant hereby withdraws the Motion to Dismiss Count II of the Complaint. Plaintiff has consented to the withdrawal.

Dated: April 10, 2019

Respectfully submitted,

/s/ Eileen B. Goldsmith

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was electronically filed and served through the CM/ECF system this 10th day of April, 2019, on all registered parties.

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