

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**Case No. 8:20-cv-00325-MSS-AEP**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**BRIAN DAVISON, *et al.*,**

**Defendants,**

\_\_\_\_\_ /

**PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO FILE ITS  
RESPONSE TO MOTION TO DISMISS**

Plaintiff Securities and Exchange Commission, by and through undersigned counsel, and pursuant to Fed. R. Civ. P. 6(b) and M.D. Fla. L.R. 3.01, moves the Court for an extension of time to file an Amended Complaint in lieu of a response to Defendant Barry M. Rybicki's Motion to Dismiss (D.E. 118). In support thereof, Plaintiff states as follows:

1. Defendant filed Barry M. Rybicki's Motion to Dismiss on June 18, 2020. [D.E. 118].
2. Plaintiff's Response to the Motion is due on July 2, 2020. See M.D. Fla. L.R. 3.01.
3. In Response to the Motion, Plaintiff will file an amended complaint. See Fed. R. Civ. P. 15(a)(1) (A party may amend its pleading once, as a matter of course, before being served with a responsive pleading.).

4. A motion to dismiss is not considered a responsive pleading for purposes of Rule 15(a). See Taylor v. Greene, 374 F. App'x, 949, 950 (11th Cir. 2010)
5. Therefore, Plaintiff “has the right to file an amended complaint as a matter of course . . . the plain language of Rule 15(a) shows that the district court lacks the discretion to reject [an] amended complaint based on [any allegation of its] futility.” See id. (vacating the district court’s dismissal where no responsive pleading was filed and the court denied as futile plaintiff’s motion to file an amended complaint in response to defendant’s motion to dismiss).
6. Fed. R. Civ. P. 15(a)(1)(B) allows amendment of a pleading 21 days after service of a motion under 12(b), which would make the amended complaint due July 9, 2020. Accordingly, per the rule, Plaintiff respectfully requests until July 9, 2020 to file its first amended complaint.
7. This Motion is not made to unduly delay these proceedings.
8. Furthermore, granting this Motion is in the interest of justice and will preserve judicial resources because Plaintiff’s amended complaint will render the Motion to Dismiss Motion moot.
9. Undersigned counsel has conferred with Defendants’ counsel who have no opposition to this motion.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order granting the instant Motion and allowing Plaintiff to file an amended complaint in lieu of a response to Rybicki’s Motion to Dismiss by July 9, 2020, as well as any further relief that the Court deems just and appropriate.

Dated: July 1, 2020

Respectfully submitted,

By: s/ Alise Johnson  
Alise Johnson  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 1, 2020, I electronically filed the foregoing Plaintiff's Motion for Extension of Time to File its Response to Motion to Dismiss with the Clerk of the Court using CM/ECF, which will send a notice of such filing to all counsel of record.

s/ Alise Johnson  
Alise Johnson