

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

SYMPHONY MARKETING SOLUTIONS,
INC.,

Plaintiff,

v.

SUSAN GOETZ,

Defendant.

3:08-CV-01323 (CSH)

ORDER

In the interests of judicial economy, the Court has examined the docket in this case and determined that it should act *sua sponte* to advance the progress of this litigation.

A motion to dismiss is not a responsive pleading for the purposes of Rule 15(a). *See Barbara v. N.Y. Stock Exch., Inc.*, 99 F.3d 49, 56 (2d Cir. 1996) (in a similar posture, facing only a motion to dismiss for lack of jurisdiction and failure to state a claim, district court lacked discretion to reject an amended pleading under Rule 15(a)); *see also Elfenbein v. Gulf & W. Indus., Inc.*, 590 F.2d 445, 448 (2d Cir. 1978) (“[T]he law in this circuit is that a motion to dismiss is not a responsive pleading, and therefore the complaint may be amended without leave of the court” (citing *Christophides v. Porco*, 289 F.Supp. 403, 408 (S.D.N.Y. 1968) (“A motion to dismiss a complaint under Rule 12 is not a responsive pleading within the Rule permitting amendment as of right.”)). Thus, until the defendant in this case files a responsive pleading, plaintiff Symphony Marketing Solutions, Inc. remains entitled to file one amended pleading as of right. Fed. R. Civ. P. 15(a)(1)(A).

It is therefore ORDERED that:

- Plaintiff’s Motion For Leave To File Amended Complaint [doc. #9] is **DENIED**

AS MOOT.

- Plaintiff's Proposed First Amended Complaint [doc. #9-2] is accepted but must be re-filed because it has not been signed or dated. *See* Fed. R. Civ. P. 11(a).
Plaintiff must refile its first amended complaint, signed and dated in the appropriate places, within eleven (11) days, no later than December 1, 2008.
- Because the Court must accept the plaintiff's first amended complaint, defendant's Motion To Dismiss [doc. #8] is **DENIED without prejudice**.
- **Defendant shall have twenty days** from the date of service of the first amended complaint to file her response, which may include a renewal of her motion to dismiss if so advised.

It is SO ORDERED.

Dated: New Haven, Connecticut
November 20, 2008

/s/ Charles S. Haight, Jr.
Charles S. Haight, Jr.
Senior United States District Judge