

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

ANTHONY SHAFFER,	:	
	:	
Plaintiff,	:	Civil Action No.: 10-2119 (RMU)
	:	
v.	:	Re Document Nos.: 18, 19
	:	
DEFENSE INTELLIGENCE AGENCY <i>et al.</i> ,	:	
	:	
Defendants.	:	

MEMORANDUM ORDER

DENYING WITHOUT PREJUDICE THE DEFENDANTS’ MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT; ORDERING THE PLAINTIFF TO FILE AN AMENDED COMPLAINT

This matter comes before the court on the defendants’ motion to dismiss or, in the alternative, for summary judgment. The plaintiff has filed suit against the Defense Intelligence Agency, the Department of Defense and the Central Intelligence Agency, alleging that the defendants violated his First Amendment rights by redacting passages of the plaintiff’s book prior to its publication. *See generally* Compl.

The defendants have moved to dismiss, arguing that the plaintiff lacks standing to pursue his claim because he transferred “full legal control” of his book to his publisher. *See* Defs.’ Mot. at 9. Because the plaintiff transferred his legal rights to a third party, the defendants argue, the plaintiff lacks standing to assert any constitutional injury. *Id.* at 10-11.

The plaintiff concedes that the defendant’s argument “is not wholly unreasonable in light of the stated factual assertions in his Complaint.” Pl.’s Opp’n at 5. In his opposition, however, the plaintiff disputes the defendants’ argument and attaches, for the first time, a publishing agreement that purportedly shows that the plaintiff did not transfer the full legal rights of the book to his publisher. *See id.*, Ex. 1.

It is “within the trial court’s power to allow or to require the plaintiff to supply by amendment of the complaint . . . further particularized allegations of fact deemed supportive of the plaintiff’s standing.” *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987) (quoting *Warth v. Seldin*, 422 U.S. 490, 501-02 (1975)). Accordingly, the court shall require the plaintiff to submit an amended complaint that fully details the factual basis for the plaintiff’s claim of standing. See *Roy M. Moffit Co. v. Ecobar*, 1986 WL 4428, at *1 (N.D. Ill. Apr. 8, 1986) (*sua sponte* ordering the plaintiff to amend the complaint to include facts to address jurisdictional questions); *Johnson v. Verizon*, 2009 WL 3000080, at *3 (S.D.N.Y. Sept. 21, 2009) (*sua sponte* ordering the plaintiff to amend his complaint by a specified date).

The filing of an amended complaint necessarily renders the original complaint a nullity. *Wultz v. Islamic Republic of Iran*, 2009 WL 4981537, at *1 (D.D.C. Dec. 14, 2009) (citing 6 FED. PRAC. & PROC. § 1476). “A motion to dismiss a complaint that has been subsequently amended is therefore moot.” *Id.* (citing *Myvett v. Williams*, 638 F. Supp. 2d 59, 62 n.1 (D.D.C.2009)); accord *Mass. Mfg. Extension P’ship v. Locke*, 723 F. Supp. 2d 27, 29-30 (D.D.C. 2010); *Gray v. D.C. Public Schs.*, 688 F. Supp. 2d 1, 6 (D.D.C. 2010). Because the filing of an amended complaint will necessarily render the defendant’s motion moot, the court denies the defendants’ motion without prejudice.

For the foregoing reasons, it is this 12th day of January, 2012, hereby

ORDERED that the defendants’ motion to dismiss or, in the alternative, for summary judgment is **DENIED without prejudice**; and it is

FURTHER ORDERED that the plaintiff shall file an amended complaint on or before February 13, 2012.

SO ORDERED.

RICARDO M. URBINA
United States District Judge