UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CARLOS EMMANUEL MORENO ORTEGA, Plaintiff, v. NISSAN NORTH AMERICA, INC., Defendant.	Case No. 1:22-cv-01581-ADA-EPG FINDINGS AND RECOMMENDATIONS TO DENY DEFENDANT'S MOTION TO DISMISS AS MOOT (ECF No. 6)

On December 9, 2022, Plaintiff filed this action bringing California state law claims arising from an allegedly defective vehicle. (ECF No. 1). On January 4, 2023, Defendant filed a motion to dismiss under Federal Rule of Civil Procedure 12(b). (ECF No. 6). On January 12, 2023, the presiding District Judge referred the motion to dismiss for the preparation of findings and recommendations or other appropriate action. (ECF No. 9). On January 18, 2023, Plaintiff filed a first amended complaint. (ECF No. 10).

As Plaintiff's amended complaint supersedes the original complaint, Defendant's motion to dismiss is moot. *See Ramirez v. Cnty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) ("Because the Defendants' motion to dismiss targeted the Plaintiff's First Amended Complaint, which was no longer in effect [after Plaintiff filed a Second Amended Complaint], we conclude that the motion to dismiss should have been deemed moot before the district court granted it.").

Accordingly, IT IS RECOMMENDED that Defendant's motion to dismiss (ECF No. 6) be denied as moot.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen (14) days after being served with these findings and recommendations, any party may file written objections with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within fourteen (14) days after service of the objections. The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **January 19, 2023**

/s/ Eric P. Grosjean
UNITED STATES MAGISTRATE JUDGE