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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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10	Irwin Financial Corporation, an Indiana corporation; and Irwin Mortgage Corporation, and Indian corporation,)	No. CV-08-631-PHX-DGC
11)	ORDER
12	Plaintiffs/Counterdefendant,)	
13	vs.)	
14	E.M.P.P., Inc., an Arizona corporation,)	
15	Defendant/Counterclaimant.)	
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18 Irwin Mortgage Corporation has filed a motion to dismiss EMPP’s counterclaim and
19 an alternative motion for a more definite statement. Dkt. #15. EMPP has responded by filing
20 an amended counterclaim. Dkt. #21.

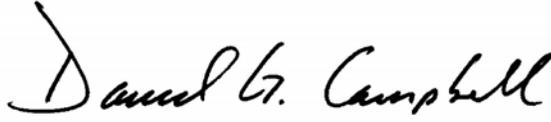
21 Because a motion to dismiss is not a “responsive pleading” within the meaning of
22 Rule 15 of the Federal Rules of Civil Procedure, EMPP was entitled to file its amended
23 counterclaim as a matter of course. *See* Fed. R. Civ. P. 15(a); *Allwaste, Inc. v. Hecht*, 65 F.3d
24 1523, 1530 (9th Cir. 1995) (citing *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d
25 1393, 1401 (9th Cir. 1986)). In light of the amended counterclaim, the Court will deny the
26 motion to dismiss the original counterclaim and the alternative motion for a more definite
27 statement as moot.

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IT IS ORDERED that Irwin Mortgage Corporation's motion to dismiss counterclaim and alternative motion for more definite statement (Dkt. #15) are **denied** as moot.

DATED this 9th day of September, 2008.



David G. Campbell
United States District Judge