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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Jane Ritzenthaler; Richard Ritzenthaler,) No. CV 11-1500-PHX-JAT

10 Plaintiffs,) **ORDER**

11 vs.)

12 Bank of America; et al.,)

13 Defendants.)

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16 Plaintiffs filed their Complaint on August 1, 2011. (1.) Defendants filed a Motion
17 to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim
18 on December 12, 2011. (Doc. 22.) Rather than filing a response to the Motion to Dismiss,
19 Plaintiffs filed a Motion to Amend on December 20, 2011. (Doc. 25.)

20 Federal Rule of Civil Procedure 15(a)(1) provides that a party may amend its pleading
21 once as a matter of course within twenty-one days of service or, if the pleading is one to
22 which a responsive pleading is required, within twenty-one days after service of the
23 responsive pleading or a motion under Rule 12(b), whichever is earlier. None of the
24 Defendants has filed an Answer. Defendants instead filed a motion under Rule 12(b).
25 Plaintiffs filed their Motion to Amend within twenty-one days after Defendants filed their
26 motion under Rule 12(b)(6). Plaintiffs therefore fall within the timing parameters for an
27 amendment as a matter of course.

28 Because Plaintiffs are entitled to an amendment as a matter of course pursuant to Rule

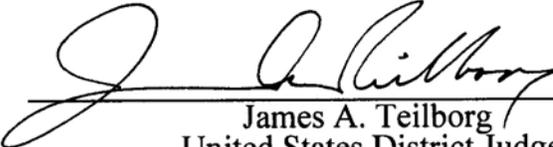
1 15(a)(1)(B), the Court will grant their Motion to Amend. The Proposed Amended Complaint
2 filed at Docket 25 is now the operative complaint in this case. *Valadez-Lopez v. Chertoff*,
3 656 F.3d 851, 857 (9th Cir. 2011)("[I]t is well established that an amended complaint
4 supersedes the original, the latter being treated thereafter as non-existent."). Because
5 Defendants' Motion to Dismiss is not directed at the new, operative complaint, the Court will
6 deny their Motion to Dismiss as moot without prejudice to re-filing a motion directed toward
7 the Amended Complaint.

8 Accordingly,

9 **IT IS ORDERED** Granting Plaintiffs' Motion to Amend (Doc. 25). The Amended
10 Complaint at Docket 25 is accepted as the operative complaint.

11 **IT IS FURTHER ORDERED** Denying as moot Defendants' Motion to Dismiss
12 (Doc. 22).

13 DATED this 18th day of April, 2012.

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18 James A. Teilborg
19 United States District Judge
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