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7 **IN THE UNITED STATES DISTRICT COURT FOR THE**
8 **EASTERN DISTRICT OF CALIFORNIA**

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10 KINGSBURG APPLE PACKERS INC.)
D/B/A KINGSBURG ORCHARDS, et. al.)

11 Plaintiffs,)

12 v.)

13 BALLANTINE PRODUCE Co., Inc., et. al.,)

14 Defendants.)

15 WAGON WHEEL FARMS, INC., a)
California corporation,)

16 Intervenor Plaintiff,)

17 v.)

18 BALLANTINE PRODUCE CO., Inc. et. al.)

19 Defendants.)
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NO. 1:09-CV-901-AWI-JLT

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS WAGON
WHEEL'S COMPLAINT AS MOOT

(Doc. No. 205)

23 On August 6, 2010, Defendants Ballantine, David Albertson, Eric Albertson, Richard
24 Graham, Redwood Farms, and Babijuce's (collectively "Defendants") filed a motion to dismiss
25 Plaintiff Wagon Wheel Farms, Inc.'s ("Wagon Wheel") Second-Amended Complaint, which was
26 filed on July 20, 2010. On July 30, 2010, however, Wagon Wheel filed a Third-Amended
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1 Complaint.¹ Wagon Wheel filed its Third-Amended Complaint in response to the Court's July
2 16, 2010 Order, which allowed Wagon Wheel to file an amended complaint on or by July 30,
3 2010. The Third-Amended Complaint supersedes the original complaint, and the original
4 complaint is treated as non-existent. An "amended complaint supersedes the original, the latter
5 being treated thereafter as non-existent." Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir.
6 1997); see also Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Since Defendants' motion
7 attacks Wagon Wheel's Second-Amended Complaint and now "non-existent" complaint,
8 Defendants' motion is now moot.

9 Accordingly, IT IS HEREBY ORDERED that Defendants' motion to dismiss, which is
10 Document Number 205 on the Court's docket, is DENIED as moot.

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12 IT IS SO ORDERED.

13 Dated: October 8, 2010


14 CHIEF UNITED STATES DISTRICT JUDGE
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25 ¹The Court notes that because Defendants' Motion to Dismiss makes specific references
26 to allegations contained in the Second-Amended Complaint, the Court is satisfied that
27 Defendants are in fact targeting the Second-Amended Complaint and not just accidentally referring
to the Third-Amended Complaint as the Second-Amended Complaint. Moreover, the Third-
Amended Complaint is substantively different from the Second-Amended Complaint.