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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

RODNEY CRITTENDEN,)
)
 Plaintiff,)
)
 v.)
)
 HOMEQ SERVICING; BARCLAYS)
 BANK PLC; EQUIFIRST)
 CORPORATION; and, does 1 to 100,)
 INCLUSIVE,)
)
 Defendants.)
 _____)

**CIV-F-09-0950 AWI DLB
ORDER DENYING AS MOOT
DEFENDANTS’ MOTION TO
DISMISS**

On June 5, 2009, Defendants made a motion for to dismiss, with the hearing set for August 3, 2009. On July 29, 2009, Plaintiff filed an amended complaint. Under Rule 15(a), “A party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served.” Fed. R. Civ. Proc. 15(a)(1)(A). “A motion to dismiss is not a ‘responsive pleading’ within the meaning of Rule 15.” Crum v. Circus Circus Enters., 231 F.3d 1129, 1130 n.3 (9th Cir. 2000). An “amended complaint supersedes the original, the latter being treated thereafter as non-existent.” Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997).

Here, the Defendants did not file an answer, but instead filed a motion to dismiss. As no prior amended complaints have been filed, Plaintiff was entitled to file his amended complaint as a matter of course under Rule 15(a). The amended complaint supersedes the original complaint, and the original complaint is treated as non-existent. Since Defendants’ motion seeks dismissal of the original and now “non-existent” complaint, Defendants’ motion is now moot.

1 Accordingly, IT IS HEREBY ORDERED that Defendants' motion to dismiss is DENIED
2 as moot.

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4 IT IS SO ORDERED.

5 **Dated: July 30, 2009**

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE

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