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

ERIN BOGDAN,)	1:09-CV-1055 AWI SMS
)	
Plaintiff,)	ORDER VACATING
v.)	SEPTEMBER 14, 2009,
)	HEARING DATE AND ORDER
COUNTRYWIDE HOME LOANS, et. al,)	ON DEFENDANTS'S
)	MOTIONS TO DISMISS
Defendants.)	
_____)	(Doc. Nos. 8 & 10)
_____)	

Defendant Select Portfolio Servicing filed a Rule 12(b)(6) motion to dismiss on July 28, 2009. See Court’s Docket Doc. No. 8. On August 6, 2009, Defendants Countrywide Home Loans, Reconstruct Company, and Mortgage Electronic Registration Systems filed a Rule 12(b)(6) motion to dismiss. See id. at Doc. No. 10. Hearing on both of these motions currently is set for September 14, 2009. See id. at Doc. No. 11. On August 14, 2009, Plaintiff filed an amended complaint. No defendant has filed any answer in this case.

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. Pro. 15(a); Crum v. Circus Circus Enters., 231 F.3d 1129, 1130 n.3 (9th Cir. 2000). “A motion to dismiss is not a ‘responsive pleading’ within the meaning of Rule 15.” Crum, 231 F.3d at 1130 n.3; New v. Armour Pharmaceutical Co., 67 F.3d 716, 722 (9th Cir. 1995); see also Morrison v. Mahoney, 399 F.3d 1042, 1047 (9th Cir. 2005). Thus, where a motion to dismiss is filed instead of an answer, Rule 15(a) allows a plaintiff to amend the original complaint once as a matter of course without the need of obtaining leave of court. Fed. R. Civ. Pro. 15(a); Crum, 231 F.3d at 1130 n.3. 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); Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).

1 Here, the Defendants did not file answers, but instead filed motions to dismiss. As no
2 prior amended complaints have been filed, Plaintiff was entitled to file her amended complaint as
3 a matter of course under Rule 15(a). The amended complaint supersedes the original complaint,
4 and the original complaint is treated as non-existent. Since Defendants' motions attack
5 Plaintiff's original and now "non-existent" complaint, Defendants' motions are now moot.

6
7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The September 14, 2009, hearing date is VACATED; and
9 2. Defendants's motions to dismiss, which are Document Numbers 8 and 10 on the Court's
10 docket, are DENIED as moot.¹

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12 IT IS SO ORDERED.

13 **Dated:** August 25, 2009

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

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27 ¹On August 24, 2009, Defendant Select Portfolio Servicing filed a motion to dismiss the
28 amended complaint. See Court's Docket Doc. No. 15. Hearing on this motion is set for
September 28, 2009. This order does not affect the August 24 motion to dismiss or its
September 28, 2009, hearing date.