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

RAFAEL VALTIERRA,)
)
 Plaintiff,)
)
 v.)
)
 WELLS FARGO BANK, N.A., successor)
 in interest to WACHOVIA and DOES 1)
 through 50, inclusive,)
)
 Defendants.)

CIV-F-10-0849 AWI GSA

**ORDER DENYING MOTIONS DUE
TO FILING OF NEW AMENDED
COMPLAINT**

Docs. 4 and 5

In this case, Defendant Wells Fargo Bank, N.A. has filed a motion to dismiss for failure to state a claim and a motion to strike portions of the complaint. Subsequently, Plaintiff Rafael Valtierra filed an amended complaint on June 21, 2010. 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).

Defendant has not filed an answer. As no prior amended complaints have been filed, Plaintiff is entitled to file the amended complaint as a matter of course under Rule 15(a). Since Defendant’s motions seek dismissal and/or striking of the original and now “non-existent” complaint, Defendant’s motions are moot.

1 Accordingly, IT IS HEREBY ORDERED that Defendant's motion to dismiss and motion
2 to strike are DENIED as moot.

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5 IT IS SO ORDERED.

6 Dated: June 30, 2010



CHIEF UNITED STATES DISTRICT JUDGE

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