

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

KATHRYN SEARS,

Plaintiff,

v.

**CHOWCHILLA ELEMENTARY
SCHOOL DISTRICT, and SANDRA
FRISBY,**

Defendants.

1:10-CV-1552 AWI GSA

**ORDER VACATING
DECEMBER 20, 2010,
HEARING AND ORDER ON
DEFENDANTS'S MOTION TO
DISMISS**

(Doc. No. 8)

Defendants filed a Rule 12(b)(6) Motion to Dismiss on November 1, 2010. Hearing on the motion is set for December 20, 2010. Plaintiff filed a first amended complaint on November 12, 2010. See Court's Docket Doc. No. 11.

Under Rule 15(a)(1), "A party may amend the party's pleading once as a matter of course . . . if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. Proc. 15(a)(1)(B). 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).

Here, in order to amend her complaint as a matter of course, and without court permission or consent of the Defendants, Plaintiff had until November 22, 2010. See Fed. R. Civ. Proc. 15(a)(1)(B), (a)(2). As noted above, Plaintiff met that deadline when she filed her first amended

1 complaint on November 12, 2010. See Court's Docket Doc. No. 11. The first amended
2 complaint supersedes the original complaint, and the original complaint is treated as non-
3 existent. See Forsyth, 114 F.3d at 1474; Loux, 375 F.2d at 57. Since Defendants' motion attacks
4 Plaintiff's original and now "non-existent" complaint, Defendants' motion to dismiss is now
5 moot.

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7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The December 20, 2010, hearing is VACATED; and
9 2. Defendants' motion to dismiss is DENIED as moot.

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11 IT IS SO ORDERED.

12 Dated: December 2, 2010

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CHIEF UNITED STATES DISTRICT JUDGE