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

<b>FREDERICK R. LIPSCOMB and ROILYNEE M. LIPSCOMB,</b>	)	<b>1:11-CV-497 AWI JLT</b>
	)	
<b>Plaintiffs,</b>	)	<b>ORDER DENYING MOTION TO DISMISS AS MOOT</b>
<b>v.</b>	)	
	)	
<b>MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC., et al.,</b>	)	<b>(Doc. No. 4)</b>
	)	
<b>Defendants.</b>	)	

On April 19, 2011, Defendants filed a Rule 12(b)(6) motion to dismiss. See Court’s Docket Doc. No. 4. On May 6, 2011, Plaintiffs filed an opposition which stated that the Court should deny the motion to dismiss because Plaintiffs were going to file an amended complaint. See id. at Doc. No. 6. On May 9, 2011, Plaintiffs filed an amended complaint. See id. at Doc. No. 7.

Federal Rule of Civil Procedure 15 governs amended pleadings. In pertinent part, Rule 15(a) reads: “A party may amend its pleading once as a matter of course within . . . , if the pleading is one to which a response pleading is required, . . . 21 days after service of a motion under Rule 12(b) . . . .” Fed. R. Civ. Pro. 15(a)(1)(B). Thus, where a Rule 12(b) motion to dismiss is filed, Rule 15(a) allows a plaintiff to amend the original complaint once as a matter of course within 21 days of the motion and without the need of obtaining leave of court. See Fed.

1 R. Civ. Pro. 15(a)(B)(1); Crum v. Circus Circus Enters., 231 F.3d 1129, 1130 n.3 (9th Cir. 2000).  
2 An “amended complaint supersedes the original, the latter being treated thereafter as non-  
3 existent.” Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); Loux v. Rhay, 375 F.2d  
4 55, 57 (9th Cir. 1967).

5 Here, in response to Defendants’ Rule 12(b)(6) motion, Plaintiffs had until May 10, 2011,  
6 to file an amended complaint pursuant to Rule 15(a)(1)(B)’s 21 day time limit. Since Plaintiffs  
7 filed their amended complaint on May 9, 2011, Plaintiffs timely amended the complaint.  
8 See Court’s Docket Doc. No. 7. As a result, the amended complaint supersedes the original  
9 complaint, and the original complaint is treated as non-existent. See Forsyth, 114 F.3d at 1474;  
10 Loux, 375 F.2d at 57. Because Defendants’ motion attacks Plaintiffs’ original and now “non-  
11 existent” complaint, Defendants’ motion to dismiss is now moot.

12  
13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Defendants’ motion to dismiss is DENIED as moot; and
- 15 2. Defendants may file either a responsive pleading or a responsive motion no later than  
16 twenty-one (21) days from the service of this order.

17 IT IS SO ORDERED.

18 Dated: May 23, 2011

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20 CHIEF UNITED STATES DISTRICT JUDGE  
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