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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
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9 **LYLE S. McFARLAND,**

10 **Plaintiff**

11 **v.**

12 **CITY OF CLOVIS, et al.,**

13 **Defendants**
14

CASE NO. 1:15-CV-01530-AWI-SMS

**ORDER VACATING HEARING AND
ORDER ON MOTION TO DISMISS**

(Doc. No. 6)

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16 Currently pending before the Court is Defendants' motion to dismiss. The motion is set to
17 be heard on December 14, 2015. The motion to dismiss was filed on November 5, 2015.

18 However, on November 23, 2015, Plaintiff filed an amended complaint.

19 Federal Rule of Civil Procedure 15 governs amended pleadings. In pertinent part, Rule
20 15(a) reads: "A party may amend its pleading once as a matter of course within . . . , if the
21 pleading is one to which a response pleading is required, 21 days after service of the responsive
22 pleading or 21 days after service of a motion under Rule 12(b)" Fed. R. Civ. P. 15(a)(1)(B).
23 Amendments made within the time limits of Rule 15(a)(1) as a matter of course do not require
24 leave of court. See Reeves v. Fed. Bureau of Prisons, 885 F.Supp.2d 384, 388 n.4 (D. D.C. 2012);
25 cf. Crum v. Circus Circus Enters., 231 F.3d 1129, 1130 n.3 (9th Cir. 2000). A properly filed
26 "amended complaint supersedes the original [complaint], the latter being treated thereafter as non-
27 existent." Ramirez v. County of San Bernardino, --- F.3d ---, 2015 U.S. App. LEXIS 20277, *15
28 (9th Cir. 2015); Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).

1 Here, Plaintiff's amended complaint is timely under Rule 15(a)(1)(B) since it was filed
2 within 21 days of the motion to dismiss. Defendants' motion now attacks a complaint that is no
3 longer operative. Ramirez, --- F.3d ---, 2015 U.S. App. LEXIS 20277 at *15. Therefore,
4 Defendants' motion to dismiss will be denied as moot. Id.

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6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The December 14, 2015, hearing on Defendants' motion is VACATED;
- 8 2. Defendants' motion to dismiss (Doc. No. 6) is DENIED as MOOT; and
- 9 3. Defendants may file an answer or other responsive motion or pleading to the First
10 Amended Complaint within ten (10) days of service of this order.

11 IT IS SO ORDERED.

12 Dated: December 2, 2015

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15 SENIOR DISTRICT JUDGE
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