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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES W. FORSYTHE, M.D., et al.,
Plaintiffs,
v.
ERIC HOLDER, et al.,
Defendants

No. C-08-5160 MMC

ORDER DENYING AS MOOT FEDERAL DEFENDANTS' MOTION TO DISMISS INITIAL COMPLAINT; DENYING AS MOOT STIPULATION TO MODIFY BRIEFING SCHEDULE AND CONTINUE HEARING

On February 26, 2009, defendants Eric Holder, Charles E. Johnson, Frank Torti, Robert Perlstein, M.D., and John Zelinski (collectively, "Federal Defendants") filed a motion to dismiss the initial complaint filed by plaintiffs James W. Forsythe, M.D., and Earlene Forsythe (collectively, "the Forsythes"). On March 6, 2009, the Forsythes filed a First Amended Complaint.

A party may amend a pleading "once as a matter of course at any time before a responsive pleading is served." See Fed. R. Civ. P. 15(a).¹ "[A]n amended pleading supersedes the original, the latter being treated thereafter as non-existent." Bullen v. De Bretteville, 239 F. 2d 824, 833 (9th Cir. 1956), cert. denied, 353 U.S. 947 (1957).

Accordingly, the Court hereby DENIES as moot the Federal Defendants' motion to

¹A motion to dismiss is not a "responsive pleading." See Crum v. Circus Circus Enterprises, 231 F. 3d 1129, 1130 n. 3 (9th Cir. 2000).

1 dismiss the initial complaint, and the hearing scheduled for April 3, 2009 is hereby
2 VACATED.

3 In light of the new complaint, the parties' stipulation, by which the parties seek to
4 modify the briefing schedule on the Federal Defendants' motion to dismiss the initial
5 complaint and to continue the April 3, 2009 hearing on said motion, is hereby DENIED as
6 moot.

7 **IT IS SO ORDERED.**

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9 Dated: March 19, 2009


MAXINE M. CHESNEY
United States District Judge

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