

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
For the Northern District of California

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

JOSEFINO VELARDE, et al.,
Plaintiffs,
v.
WELLS FARGO BANK, N.A., et al.
Defendants.

No. C 10-2255 MMC

**ORDER DENYING AS MOOT
DEFENDANTS' MOTION TO DISMISS;
VACATING HEARING**

Before the Court is defendant First American LoanStar Trustee Services' ("First American") Motion to Dismiss, filed May 28, 2010 and thereafter noticed for hearing on July 30, 2010. On June 18, 2010, plaintiffs Josefino Velarde and Carmelita Mendoza Velarde filed a First Amended Complaint.

A party may amend a pleading "once as a matter of course" if no defendant files a responsive pleading within "21 days after service of a motion under Rule 12(b), (e), or (f)." See Fed. R. Civ. P. 15(a)(1)(B).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 defendant First American's Motion

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 to Dismiss, and VACATES the July 30, 2010 hearing thereon.

2 **IT IS SO ORDERED.**

3

4 Dated: July 8, 2010

/s/ _____
SUSAN ILLSTON for
MAXINE M. CHESNEY
United States District Judge

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28