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

ELAINE MENDENHALL, et al.,

No. C 10-5302 MMC

Plaintiffs,

**ORDER DENYING AS MOOT
DEFENDANT WCS LENDING, LLC'S
MOTION TO DISMISS; VACATING
HEARING**

v.

JP MORGAN CHASE BANK, et al.,

Defendants

Before the Court is the Motion to Dismiss, filed and served February 16, 2011 by defendant WCS Lending, LLC, erroneously sued as WCS Lending, Inc. ("WCS"), by which WCS seeks dismissal of plaintiffs' complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. On March 1, 2011, plaintiffs filed a First Amended Complaint ("FAC").

A party may amend a pleading "once as a matter of course within . . . 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." See Fed. R. Civ. P. 15(a). "[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).

Here, plaintiffs filed the FAC within 21 days of the date on which they were served with WCS's motion to dismiss, and, consequently, were entitled to amend as of right.¹ See


¹No defendant other than WCS has appeared.

1 Fed. R. Civ. P. 15(a).

2 Accordingly, the Court hereby DENIES as moot WCS's motion to dismiss, and
3 VACATES the March 25, 2011 hearing scheduled thereon.

4 **IT IS SO ORDERED.**

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6 Dated: March 3, 2011


MAXINE M. CHESNEY
United States District Judge

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