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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 TINA M UBALDI,

No. C-11-01320 (EDL)

9 Plaintiff,

**ORDER VACATING HEARING ON
MOTION TO DISMISS**

10 v.

11 SLM CORPORATION,

12 Defendant.
13 _____/

14 On May 27, 2011, Defendant filed a motion to dismiss set to be heard on September 20,
15 2011. Instead of opposing the motion, on August 29, 2011 Plaintiff filed an Amended Complaint.
16 Pursuant to Federal Rule of Civil Procedure 15(a), a party may amend its pleading once as a matter
17 of course "21 days after service of a responsive pleading or 21 days after service of a motion under
18 Rule 12(b), (e) or (f), whichever is earlier." Other amendments require a stipulation or Order of
19 Court. See Fed. R. Civ. P. 15(b).

20 Plaintiff's Amended Complaint was not filed within 21 days of Defendant's motion and
21 Plaintiff did not file a stipulation relating to the amendment or obtain leave of Court to file the
22 Amended Complaint. Therefore, the Amended Complaint is currently of no effect and the Motion to
23 Dismiss the original Complaint is not moot at this time. If the parties stipulate to Plaintiff's filing of
24 the Amended Complaint, they must file a stipulation within three days of the date of this Order and
25 Defendant should withdraw the pending Motion to Dismiss. Otherwise, Plaintiff must properly seek
26 leave of Court to file the Amended Complaint within three days of the date of this Order. The
27 hearing on Defendant's Motion to Dismiss is VACATED pending resolution of which complaint is

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1 the operative pleading.

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3 **IT IS SO ORDERED.**

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6 Dated: September 2, 2011

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Elizabeth D. Laporte

ELIZABETH D. LAPORTE
United States Magistrate Judge