

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 RONALD HERD,
5 Plaintiff,
6 v.
7 CITY OF OAKLAND, et al.,
8 Defendants.

Case No. [13-cv-04443-MEJ](#) (MEJ)

**ORDER DENYING MOTIONS TO
DISMISS AS MOOT**

Re: Dkt. Nos. 6, 9

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10 Pending before the Court are Defendants' Motions to Dismiss. Dkt. Nos. 6, 9. However,
11 on November 13, 2013, Plaintiff filed an Amended Complaint. Dkt. No. 11. Under Federal Rule
12 of Civil Procedure 15, a party may amend its pleading once "as a matter of course" within "21
13 days after service of a motion under Rule 12(b), (e), or (f)." Fed. R. Civ. P. 15(a)(1)(B). Thus, as
14 no prior amended complaints have been filed, Plaintiff was entitled to file an amended complaint
15 as a matter of course under Rule 15(a). Once properly served, the amended complaint supersedes
16 the original complaint, which is treated as non-existent. Since Defendants' motion are based on
17 Plaintiff's original complaint, the Court hereby DENIES Defendants' motions as moot.
18 Defendants shall file an answer or other responsive pleading within 21 days from the date of this
19 Order.

20 Plaintiff is advised that no further amendments may be made without seeking leave of
21 Court pursuant to Rule 15 and Civil Local Rule 7. Any attempt to file an amended complaint
22 without proper notice to Defendant under Civil Local Rule 7 and a court order shall be stricken.

23 **IT IS SO ORDERED.**

24 Dated: November 13, 2013

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28 MARIA-ELENA JAMES
United States Magistrate Judge