

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 TATYANA KAMINSKY,
4 Plaintiff,
5 v.
6 KIMBERLITE CORPORATION, et al.,
7 Defendants.
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Case No. [14-cv-00418-MEJ](#)

**ORDER FINDING AS MOOT MOTION
TO DISMISS**

Re: Dkt. Nos. 5, 11

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10 Pending before the Court is Defendant's Motion to Dismiss. Dkt. No. 5. However, on
11 February 18, 2014, Plaintiff filed an Amended Complaint. Dkt. No. 11. Under Federal Rule of
12 Civil Procedure 15, a party may amend its pleading once "as a matter of course" within "21 days
13 after service of a motion under Rule 12(b), (e), or (f)." Fed. R. Civ. P. 15(a)(1)(B). Thus, as no
14 prior amended complaints have been filed, Plaintiff was entitled to file an amended complaint as a
15 matter of course under Rule 15(a). Once properly served, the amended complaint supersedes the
16 original complaint, which is treated as non-existent. Since Defendant's motion is based on
17 Plaintiff's original complaint, the Court hereby DENIES Defendant's motion as moot. Defendant
18 shall file an answer or other responsive pleading within 21 days from the date of this Order.

19 Plaintiff is advised that no further amendments may be made without seeking leave of
20 Court pursuant to Rule 15 and Civil Local Rule 7.

21 **IT IS SO ORDERED.**

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23 Dated: February 19, 2014

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26 MARIA-ELENA JAMES
27 United States Magistrate Judge
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