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6 UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 OAKLAND DIVISION

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10 JAMIE J. MORRIS and KATIE MORRIS,

11 Plaintiffs,

12 vs.

13 BANK OF AMERICA, successor due to the
14 acquisition of Countrywide Home Loans and
15 FEDERAL NATIONAL MORTGAGE
ASSOCIATION a/k/a FANNIE MAE,

16 Defendant.

Case No: C 09-2849 SBA

ORDER

17 Plaintiffs Jamie J. Morris and Katie Morris ("Plaintiffs") filed the instant action against
18 Defendants BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP
19 (erroneously sued as Bank of America) ("BAC Servicing") and Federal National Mortgage
20 Association ("FNMA") (collectively "Defendants"), on June 25, 2009. In response, Defendants
21 filed a Motion to Dismiss pursuant to Fed. R. of Civ. P. 12(b)(6) and Motion to Strike pursuant to
22 Fed. R. Civ. P. 12(f) (the "motions"). (Docket 9.) The motions are scheduled for hearing on
23 November 17, 2009. On October 14, 2009, Plaintiffs filed a First Amended Complaint (Docket
24 No. 15) and an opposition to Defendants' motion to dismiss (Docket No. 16). The opposition
25 summarily stated that a First Amended Complaint had been filed and the motion to dismiss was
26 rendered moot.

27 A plaintiff can amend its complaint once as a matter of right before a responsive pleading is
28 served. Fed.R.Civ.P. 15(a)(1)(A). A motion to dismiss is not a responsive pleading. Doe v.

1 United States, 58 F.3d 494, 497 (9th Cir. 1995). A motion to strike also does not constitute a
2 responsive pleading. *Farmer v. Ocwen Loan Servicing, LLC*, 2009 WL 3424191, at *1 (E.D.Cal.
3 2009) (citing *Neifeld v. Steinberg*, 438 F.2d 423, 425 n. 3 (3d Cir.1971). Because the FAC is now
4 the operative pleading before the Court, the motions, which were directed to the original complaint,
5 are now moot. The Court is aware that Defendants have filed a motion to dismiss Plaintiffs' First
6 Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) and a motion to strike pursuant to Fed. R.
7 Civ. P. 12(f), which is presently scheduled for January 26, 2010. (Docket No. 18.)


9 Accordingly,

10 IT IS HEREBY ORDERED THAT:

- 11 1. Defendants' motion to dismiss and motion to strike (Docket 9) are DENIED AS MOOT;
12 and
- 13 2. The Case Management Conference currently scheduled for November 17, 2009 shall
14 be CONTINUED to **January 26, 2010, at 1:00 p.m.** and shall follow the hearing on
15 Defendants' motion to dismiss Plaintiff's First Amended Complaint presently scheduled
16 for the same day. The parties shall **meet and confer** prior to the conference and shall
17 prepare a joint Case Management Conference Statement which shall be filed no later
18 than ten (10) days prior to the Case Management Conference that complies with the
19 Standing Order For All Judges Of The Northern District Of California and the Standing
20 Order of this Court.

21
22 IT IS SO ORDERED.

23 Dated: 11/13/09

24 
25 Hon. Sandra Brown Armstrong
26 United States District Judge
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