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2 \*\*E-Filed 2/6/09\*\*  
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7 NOT FOR CITATION  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
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12 DAISY QUESADA,

13 Plaintiff,

14 v.

15 NDEX WEST, LLC, et al.,

16 Defendants.  
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Case Number C 08-5668 JF (HRL)

ORDER VACATING MOTION TO  
DISMISS AS MOOT

[re: doc. no. 5]

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19 Plaintiff filed the complaint in the instant action on October 29, 2008 in the Santa Clara  
20 Superior Court. Defendants removed the action on December 18, 2008, and filed a motion to  
21 dismiss on December 29, 2008. Plaintiff filed an amended complaint on January 30, 2009.

22 Pursuant to Federal Rule of Civil Procedure 15(a), “[a] party may amend the party’s  
23 pleading once as a matter of course at any time before a responsive pleading is served.” A  
24 motion to dismiss does not constitute a responsive pleading within the meaning of Rule 15(a);  
25 Plaintiff thus does not need leave of court to file an amended complaint. *See Crum v. Circus*  
26 *Circus Enterprises*, 231 F.3d 1129, 1130 n.3 (9th Cir. 2000). Accordingly, the pending motion  
27 to dismiss will be vacated as moot.  
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**ORDER**

Defendants' motion to dismiss filed December 29, 2008 is VACATED AS MOOT.

DATED: 2/6/09



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JEREMY FOGEL  
United States District Judge

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1 This Order was served on the following persons:

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