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3 UNITED STATES DISTRICT COURT

4 NORTHERN DISTRICT OF CALIFORNIA

5 SAN JOSE DIVISION

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7 FITNESS ANYWHERE LLC,

Plaintiff,

8

v.

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WOSS ENTERPRISES LLC,

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Defendant.

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Case No. 14-cv-01725-BLF

ORDER STRIKING AMENDED COUNTERCLAIM WITH DIRECTIONS TO DEFENDANT; TERMINATING MOTION TO DISMISS

[Re: ECF 20, 25]

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13   On July 28, 2014, Defendant filed a First Amended Counterclaim pursuant to Federal Rule

14 of Civil Procedure 15(a)(1)(B). (ECF 25) The initial counterclaim was incorporated in

15 Defendant's Answer. (ECF 16). The First Amended Counterclaim was improperly filed as a

16 separate document that does not include Defendant's Answer. Fed. R. Civ. P. 7, 13; *see also* Civil

17 Local Rule 10-1 ("Any party filing . . . an amended pleading must reproduce the entire proposed

18 pleading and may not incorporate any part of a prior pleading by reference."). Accordingly, the

19 Court STRIKES Defendant's First Amended Counterclaim. IT IS HEREBY ORDERED that

20 Defendant shall file an Answer and Amended Counterclaim that complies with the applicable

21 federal and local rules no later than **seven (7) days** from the date of this order. Defendant shall
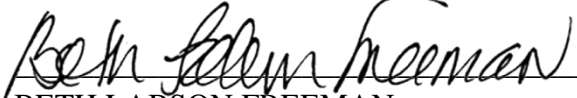
22 make no other changes to its pleadings.

23   The Federal Rules permit a party to amend its pleading "once as a matter of course" within

24 "21 days after service of a motion under Rule 12(b)." Fed. R. Civ. P. 15(a)(1)(B). An amended

25 pleading supersedes the original. *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967); *see also*

26 *Connectu LLC v. Zuckerberg*, 522 F.3d 82, 91 (1st Cir. 2008). Because Defendant's Answer and

27 Amended Counterclaim, once filed, will stand as the operative pleading, Plaintiff's motion to

28 dismiss the original counterclaim, filed July 15, 2014, (ECF 20), is hereby terminated as moot.

Plaintiff shall have until **August 22, 2014** to respond to Defendant's Amended Counterclaim.

IT IS SO ORDERED.

Dated: August 4, 2014

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BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California