

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DARYL DEVINCENZI,
Plaintiff,
v.
EXPERIAN INFORMATION SOLUTIONS,
INC., et al.,
Defendants.

Case No. 16-CV-04628-LHK

**ORDER DENYING MOTIONS TO
DISMISS AS MOOT (AMENDED)¹**

Re: Dkt. Nos. 8, 17, 24

On September 13, 2016, Defendant Experian Information Solutions, Inc. (“Experian”) filed a motion to dismiss Plaintiff’s complaint. ECF No. 8. On September 30, 2016, Defendant Roundpoint Mortgage Company (“Roundpoint”) filed a motion to dismiss Plaintiff’s complaint. ECF No. 17. Plaintiff did not file oppositions to these motions to dismiss. Instead, on October 3, 2016, Plaintiff filed an Amended Complaint. ECF No. 19.

Under Federal Rule of Civil Procedure (“Rule”) 15(a)(1)(B), if a pleading requires a responsive pleading, a party may amend the original pleading once within “21 days after service of

¹ This Order modifies and supersedes the Court’s November 3, 2016 Order [ECF No. 23]. The November 3, 2016 Order is hereby vacated, and Plaintiff’s November 3, 2016 motion for leave to file motion for reconsideration is denied as moot.

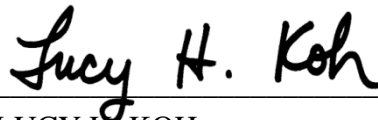
1 a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever
2 is earlier.” Therefore, Plaintiff’s amendment on October 3, 2016 was an amendment as of right.

3 An “amended complaint supersedes the original, the latter being treated thereafter as non-
4 existent.” *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir.1997), *overruled on other*
5 *grounds by Lacey v. Maricopa Cty.*, 693 F.3d 896, 925 (9th Cir. 2012). For this reason, after an
6 amendment, “pending motions concerning the original complaint must be denied as moot.” *Hylton*
7 *v. Anytime Towing*, 2012 WL 1019829, at *5 (S.D. Cal. Mar. 26, 2012). Therefore, the Court
8 DENIES Experian’s and Roundpoint’s motions to dismiss the original complaint as moot and
9 vacates the hearing scheduled for December 1, 2016 at 1:30 p.m.

10 Nevertheless, Plaintiff has now amended the complaint in light of the deficiencies
11 identified in Experian’s and Roundpoint’s motions to dismiss. Thus, if the Court grants any future
12 motion to dismiss the amended complaint based on these deficiencies, the Court will dismiss the
13 amended complaint with prejudice.

14 **IT IS SO ORDERED.**

15
16 Dated: November 4, 2016



17
18 LUCY H. KOH
United States District Judge

19
20
21
22
23
24
25
26
27
28