United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SHANNON DOSTER,

Plaintiff,

v.

EXPERIAN INFORMATION SOLUTIONS, INC.,

Defendant.

Case No. 16-CV-04629-LHK

ORDER DENYING MOTION TO DISMISS AS MOOT

Re: Dkt. No. 11

On September 13, 2016, Defendant Experian Information Solutions, Inc. ("Experian") filed a motion to dismiss Plaintiff's complaint. ECF No. 8. Plaintiff did not file an opposition to this motion 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 a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Therefore, Plaintiff's amendment on October 3, 2016 was an amendment as of right.

An "amended complaint supersedes the original, the latter being treated thereafter as non-existent." *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir.1997), *overruled on other*

grounds by Lacey v. Maricopa Cty., 693 F.3d 896, 925 (9th Cir. 2012). For this reason, after an amendment, "pending motions concerning the original complaint must be denied as moot." *Hylton v. Anytime Towing*, 2012 WL 1019829, at *5 (S.D. Cal. Mar. 26, 2012). Therefore, the Court DENIES Experian's motion to dismiss the original complaint as moot and vacates the hearing scheduled for December 8, 2016 at 1:30 p.m. The Initial Case Management Conference scheduled for the same day and time shall remain as set.

Nevertheless, Plaintiff has now amended the complaint in light of the deficiencies identified in Experian's motion to dismiss. Thus, if the Court grants any future motion to dismiss the amended complaint based on these deficiencies, the Court will dismiss the amended complaint with prejudice.

IT IS SO ORDERED.

Dated: November 3, 2016

Lucy H. Koh

LUCY H. KOH
United States District Judge

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