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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CAMEO BURTON,
Plaintiff,
v.
WELLS FARGO BANK, NA,
Defendant.

Case No. 16-CV-06290-LHK

**ORDER DENYING MOTION TO
DISMISS AS MOOT**

Re: Dkt. No. 11

On November 23, 2016, Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) filed a motion to dismiss Plaintiff’s complaint. ECF No. 11. Plaintiff did not file an opposition to the motion to dismiss. Instead, on December 9, 2016, Plaintiff filed an amended complaint. ECF No. 13.

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 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 December 9, 2016 amendment 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*

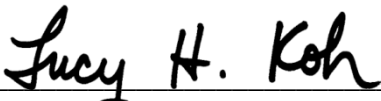
1 grounds by *Lacey v. Maricopa Cty.*, 693 F.3d 896, 925 (9th Cir. 2012). For this reason, after an
2 amendment, “pending motions concerning the original complaint must be denied as moot.” *Hylton*
3 *v. Anytime Towing*, 2012 WL 1019829, at *5 (S.D. Cal. Mar. 26, 2012). Therefore, the Court
4 DENIES Wells Fargo’s motion to dismiss as moot and vacates the hearing scheduled for February
5 9, 2017.

6 Nevertheless, Plaintiff has now amended the complaint once in light of the deficiencies
7 identified in Wells Fargo’s motion to dismiss. Thus, if the Court grants any future motion to
8 dismiss the amended complaint based on these same deficiencies, the Court will dismiss the
9 amended complaint with prejudice.

10 **IT IS SO ORDERED.**

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Dated: December 12, 2016



LUCY H. KOH
United States District Judge