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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SHIRLEY DALEY,  
Plaintiff,  
v.  
LOCKHEED MARTIN CORPORATION, et  
al.,  
Defendants.

Case No. 16-cv-07107-LHK  
**ORDER DENYING MOTION TO  
DISMISS AS MOOT**  
Re: Dkt. No. 13

On December 20, 2016, Defendant Lockheed Martin Corporation (“Lockheed”) filed a motion to dismiss Plaintiff’s complaint. ECF No. 13. Plaintiff filed an opposition to the motion to dismiss on January 3, 2017. ECF No. 14. In the opposition, Plaintiff did not contest that her original complaint was deficient. Instead, the opposition stated that “Ms. Daley’s response [to the motion to dismiss] is that the deficits cite[d] in Lockheed’s motion may be cured by amendment.” *Id.* at 2. Therefore, Plaintiff requested that the Court not dismiss the complaint with prejudice, but instead “order Ms. Daley to file a first amended complaint by a date certain.” *Id.* Lockheed replied on January 10, 2017. ECF No. 15. On January 10, 2017, Plaintiff filed an Amended Complaint. ECF No. 16.

Under Federal Rule of Civil Procedure (“Rule”) 15(a)(1)(B), if a pleading requires a

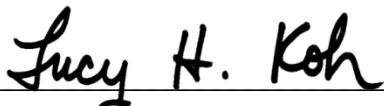
1 responsive pleading, a party may amend the original pleading within “21 days after service of a  
2 responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is  
3 earlier.” Therefore, Plaintiff’s amendment on January 10, 2017 was timely because it was filed 21  
4 days after Lockheed’s motion to dismiss.

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

11 Plaintiff has now amended the complaint once in light of the deficiencies identified in  
12 Lockheed’s motion to dismiss. Indeed, in the opposition to the motion to dismiss, Plaintiff  
13 recognized that her complaint was deficient and requested to amend her complaint to cure these  
14 deficiencies. ECF No. 14, at 2. Thus, if the Court grants any future motion to dismiss the amended  
15 complaint based on these deficiencies, the Court will dismiss the amended complaint with  
16 prejudice.

17 **IT IS SO ORDERED.**

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19 Dated: February 7, 2017

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22 LUCY H. KOH  
23 United States District Judge  
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