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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOHN STORM, an individual; SUZANNE STORM, an individual,

Plaintiffs,

vs.

AMERICA'S SERVICING COMPANY; and DOES 1-10,

Defendants.

CASE NO. 09-CV-1206-IEG (JMA)

ORDER:

(1) GRANTING PLAINTIFFS' MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT (Doc. No. 10.); and

(2) DENYING AS MOOT DEFENDANT'S MOTION TO DISMISS COMPLAINT (Doc. No. 5.)

Presently before the Court are Plaintiffs' motion for leave to file an amended complaint (Doc. No. 10) and Defendant America's Servicing Company's ("Defendant") motion to dismiss the original complaint. (Doc. No. 5.) For the reasons stated herein, the Court grants Plaintiffs' motion and denies Defendant's motion as moot.

FACTUAL AND PROCEDURAL BACKGROUND

On September 30, 2003 Plaintiff Suzanne Storm ("Ms. Storm") inherited a parcel of land in Boulevard, California (the "property"). On July 14, 2006, Ms. Storm and Plaintiff John Storm ("Mr. Storm") obtained a loan from Accredited Home Lenders, Inc. for \$520,000 secured by a First Deed of Trust against the property. The loan was subsequently transferred to U.S. Bank National Association, and Defendant became the servicer for the loan.

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1 In November 2007, Plaintiffs defaulted on their loan payments to Defendant, and
2 Defendant began non-judicial foreclosure proceedings. On May 9, 2008, Plaintiffs filed for
3 Chapter 13 Bankruptcy protection. In November 2008, during the bankruptcy proceedings, the
4 parties stipulated to Plaintiffs' making an agreed-upon monthly payment on the loan. On March
5 16, 2009, the Bankruptcy Court granted Defendant's motion for relief from automatic stay because
6 Plaintiffs had defaulted on the terms of their November 2008 agreement with Defendant. On
7 March 23, 2009, Plaintiffs voluntarily dismissed their bankruptcy petition.

8 Plaintiffs filed the instant lawsuit in California Superior Court for the County of San Diego
9 on April 2, 2009, seeking declaratory relief regarding the parties' rights and duties with respect to
10 the loan, in light of an alleged mistake in the legal description of the property on the deed of trust.
11 The complaint also sought injunctive relief against Defendant's continuing with foreclosure
12 proceedings. The property was nonetheless sold at a trustee's sale on April 8, 2009. Defendant
13 removed the case to this Court on June 3, 2009, (Doc. No. 1,) and on June 10, 2009 filed the
14 instant motion to dismiss the complaint. (Doc. No. 5.) Plaintiffs filed an opposition on July 13,
15 2009 and Defendant filed a reply on July 20, 2009. On July 27, 2009, Plaintiffs filed a motion to
16 amend the complaint. (Doc. No. 10,) and attached a proposed First Amended Complaint to their
17 motion. The proposed complaint alleges claims for declaratory relief, injunctive relief, quiet title,
18 and slander of title. The Court finds the motions suitable for disposition without oral argument
19 pursuant to Local Civil Rule 7.1(d)(1).

20 DISCUSSION AND CONCLUSION

21 Plaintiffs move the Court for leave to file an amended complaint pursuant to Fed. R. Civ.
22 P. 15. Rule 15 provides, "[a] party may amend its pleading once as a matter of course . . . before
23 being served with a responsive pleading." Fed. R. Civ. P. 15(a)(1)(A) (2009). Although Defendant
24 has filed a motion to dismiss the original complaint, a motion to dismiss is not a "responsive
25 pleading" within the meaning of the Rule 15. Breier v. N. Cal. Bowling Proprietors' Ass'n., 316
26 F.2d 787, 789 (9th Cir. Cal. 1963). A motion for leave to amend a complaint is unnecessary if
27 filed before an answer, but if such a motion is filed at that stage, the Court must grant it. Id. The
28 Court therefore **GRANTS** Plaintiffs' motion for leave to file an amended complaint, and **DENIES**

1 **AS MOOT** Defenant's motion to dismiss the original complaint. The Clerk shall docket the
2 attachment to Plaintiffs' motion as Plaintiffs' First Amended Complaint.

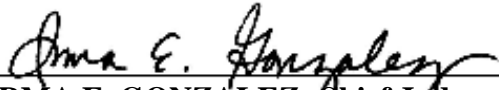
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4 **IT IS SO ORDERED.**

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6 **DATED: August 11, 2009**

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IRMA E. GONZALEZ, Chief Judge
United States District Court

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