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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAFAEL R. RAMIREZ, *et al.*,
Plaintiffs,
v.
QUALITY LOAN SERVICING CORP.,
et al.,
Defendants.

Civil No. 09cv1401-L(RBB)

**ORDER GRANTING PLAINTIFF'S
MOTION TO ENLARGE TIME TO
FILE AMENDED COMPLAINT AND
DENYING MOTION TO DISMISS
AS MOOT**

On September 21, 2009 U.S. Bank N.A., as trustee on behalf of Defendant named as Credit Suisse First Boston Mortgage Securities Corporation ("Credit Suisse") filed a Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim upon Which Relief Can Be Granted and/or for a More Definite Statement ("Credit Suisse's Motion") pursuant to Federal Rule of Civil Procedure 12(b)(6) and (e). On October 26, 2009, a week before Credit Suisse's Motion was set for a hearing, Plaintiffs filed a Motion for Leave to Enlarge Time to Plead First Amended Complaint. Because Plaintiffs did not comply with the Civil Local Rules pertaining to motions (*see* Notice of Document Discrepancies and Order Thereon signed Oct. 27, 2009) and in the interests of justice, the court construes their motion as an *ex parte* application seeking an extension of time to file the first amended complaint.

A party may amend its pleading once as a matter of course before being served with a responsive pleading. Fed. R. Civ. Proc. 15(a)(1)(A). A motion such as a motion to dismiss or a

1 motion for a more definite statement is not a pleading, and therefore not a responsive pleading,
2 as the term is used in the Federal Rules of Civil Procedure. Fed. R. Civ. Proc. 7(a); *see Crum v.*
3 *Circus Circus Enters.*, 231 F.3d 1129, 1130 n.3 (9th Cir. 2000). In the procedural posture of this
4 case, Plaintiffs may file their first amended complaint without leave of court. *See id.*

5 It appears that Plaintiffs requested enlargement of time out of an abundance of caution.
6 Plaintiffs will not be ready to file the first amended complaint until December 2, 2009.
7 According to Plaintiffs' counsel's affidavit, a serious ailment has prevented him from work and
8 necessitated him to hire additional counsel to take over his case load. For good cause shown
9 pursuant to Federal Rule of Civil Procedure 6(b), Plaintiffs' request for enlargement of time is
10 **GRANTED.**

11 An amended complaint supersedes a prior complaint as a pleading. *Forsyth v. Humana,*
12 *Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997). A district court may treat as moot a pending motion
13 to dismiss a superseded pleading. *See William W. Schwarzer et al.*, Fed. Civ. Proc. Before Trial
14 ¶ 9:262 (2009). As Plaintiffs intend to file an amended complaint, Credit Suisse's Motion is
15 **DENIED AS MOOT.**

16 For the foregoing reasons, it is hereby further **ORDERED:**

- 17 1. No later than **December 2, 2009** Plaintiffs shall file their first amended complaint. In
18 the first amended complaint, Plaintiffs shall address the issues raised in Credit Suisse's Motion.
19 2. Credit Suisse shall file a response to the first amended complaint within the time
20 provided in Rule 15(a)(3).

21 **IT IS SO ORDERED.**

22
23 DATED: October 28, 2009

24 
25 M. James Lorenz
26 United States District Court Judge
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