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

ISMAEL AGUILAR, an individual; and
MARIA DOLORES HERNANDEZ, an
individual,

Plaintiffs,

vs.

CABRILLO MORTGAGE; GMAC
MORTGAGE; SBMC MORTGAGE; ETS
SERVICES, LLC; and SELECT
PORTFOLIO SERVICING, INC.,

Defendants.

CASE NO. 09-CV-1799 - IEG (AJB)

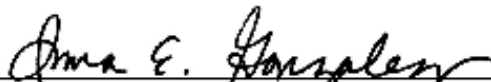
DENYING AS MOOT MOTION TO
DISMISS

[Doc. No. 4]

Currently before the Court is Defendant Select Portfolio Servicing, Inc.’s Motion to Dismiss pursuant to Rule 12(b)(6), filed on November 18, 2009 and scheduled for hearing on December 21, 2009. [Doc. No. 4]. On December 7, 2009, Plaintiffs filed their First Amended Complaint. [Doc. No. 5]. Because this is Plaintiffs’ first amendment of their complaint, and because it was filed within “21 days after service of a motion under Rule 12(b),” Plaintiffs are entitled to amend “as a matter of course.” See FED. R. CIV. P. 15(a)(1)(B). Accordingly, the Court **DENIES AS MOOT** Defendant’s Motion to Dismiss and **VACATES** the hearing on Monday, December 21, 2009.

IT IS SO ORDERED.

DATED: December 9, 2009


IRMA E. GONZALEZ, Chief Judge
United States District Court