UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

LESLIE LEXANN FERIA,

Plaintiff,

VS.

LEHMAN BROTHERS BANK, FSB, et al.,

Defendants.

CASE NO. 10 CV 1412 MMA (CAB)

ORDER RE: DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

[Doc. No. 2]

On or about May 25, 2010, Plaintiff Leslie Lexann Feria filed a civil action in the Superior Court of the State of California, San Diego County, against Defendants Aurora Bank FSB (f.k.a. Lehman Brothers Bank FSB), Cal-Western Reconveyance Corp., and Aurora Loan Services LLC (erroneously sued as Aurora Loan Service). On July 6, 2010, Defendants removed the state court action to the Southern District of California. [Doc. No. 1.] Thereafter, on July 13, Defendants filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. [Doc. No. 2.] On August 2, instead of filing an opposition to the pending motion to dismiss, Plaintiff filed an amended complaint. [Doc. No. 4.]

Under Federal Rule of Civil Procedure 15(a)(1)(B), "[a] party may amend its pleading once as a matter of course within: . . . 21 days after service of a motion under Rule 12(b), (e), or (f) . . ." Plaintiff's amended pleading supercedes the original complaint; the original pleading no longer

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1	serves any function. Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v.
2	Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Thus, the complaint which Defendants move to dismiss
3	is no longer the operative pleading in this action. Because Defendants' motion seeks dismissal of
4	a complaint that is no longer the operative pleading in this case, the motion has become moot.
5	Accordingly, IT IS HEREBY ORDERED THAT:
6	1. Defendants' motion to dismiss [Doc. No. 2] is DENIED AS MOOT and the
7	hearing currently set for August 24, 2010 is VACATED ;
8	2. Defendants shall file a response to Plaintiff's amended complaint pursuant to the
9	Federal Rules of Civil Procedure.
10	IT IS SO ORDERED.
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12	DATED: August 2, 2010
13	Michael Tu- arello
14	Hon. Michael M. Anello United States District Judge
15	Officed States District stage
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