



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KIM RHODE, et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official  
capacity as Attorney General of the State  
of California,

Defendant.

Case No.: 18-cv-802-BEN

ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS AS MOOT  
WITH LEAVE TO FILE

Defendant Xavier Becerra filed a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss on May 18, 2018. Plaintiffs filed an amended complaint on June 11, 2018. Under Rule 15(a), a plaintiff may amend her complaint once as a matter of course 21 days after service of a Rule 12(b) motion. Fed. R. Civ. Pro. 15(a). Hence, the amendment is timely filed. *Ramirez v. Cty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015). An amended complaint supersedes the original, the latter being treated thereafter as non-existent. *Id.* ("It is well-established in our circuit that an 'amended complaint supersedes the original, the latter being treated thereafter as non-existent.'" (citations omitted). As a result, the original pleading no longer performs any function. *Id.* (citations omitted). Consequently, Plaintiffs' Amended Complaint supersedes the original Complaint. Because the motion to dismiss targets the original complaint which is no longer in effect, the motion to

1 dismiss is deemed moot. *Id.* ("Because the Defendants' motion to dismiss targeted  
2 the Plaintiff's First Amended Complaint, which was no longer in effect, we  
3 conclude that the motion to dismiss should have been deemed moot before the  
4 district court granted it.").

5 Accordingly, Defendant Becerra's Rule 12(b)(6) motion to dismiss is denied  
6 as moot. The hearing set for June 25, 2018 is hereby vacated.

7 Defendant is granted leave to file a new motion to dismiss or to otherwise  
8 plead within 30 days of this Order.

9 IT IS SO ORDERED.

10 DATED: June 18, 2018

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13 Hon. Roger T. Benitez  
14 United States District Judge  
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