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5 Attorney for Defendant JUSTIN KURAITIS

6  
7 IN THE UNITED STATES DISTRICT COURT FOR THE  
8 EASTERN DISTRICT OF CALIFORNIA

9 VERONICA BRILL, et al.,  
10 Plaintiffs,  
11 v.  
12 MICHAEL L. POSTLE, et al.  
13 Defendant.

Case No. 19-cv-2027 WBS-AC

STATEMENT OF POSITION AND  
NOTICE OF WITHDRAWAL OF  
DEFENDANT JUSTIN KURAITIS'  
MOTION TO DISMISS (ECF 33)

Date: May 4, 2020  
Time: 1:30 p.m.  
Dept.: Courtroom 5  
Judge: Hon. William B. Shubb

Complaint Filed: October 8,  
2019

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23 Defendant Justin Kuraitis submits this Statement of  
24 Position and Notice of Withdrawal regarding his previously-filed  
25 Motion to Dismiss (ECF 33.) As the Ninth Circuit Court of  
26 Appeals has observed, "It is well-settled in our circuit that an  
27 'amended complaint' supersedes the original, the latter being  
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1 treated thereafter as non-existent.'" *Ramirez v. County of San*  
2 *Bernadino*, 806 F.3d 1002, 1008 (9<sup>th</sup> Cir. 2015)(citations  
3 omitted). As *Ramirez* states, with the filing of the amended  
4 complaint, the earlier complaint "ceased to exist" and a  
5 previously-filed motion to dismiss that complaint is "deemed  
6 moot." *Id.*

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8 Accordingly, defendant Kuraitis' understanding is that ECF  
9 33 is moot as a result of plaintiffs filing a First Amended  
10 Complaint (ECF 40) within the time called for by Federal Rule of  
11 Civil Procedure 15(a)(1). Lest there be any doubt, defendant  
12 Kuraitis withdraws his Motion to Dismiss (ECF 33).

13 Defendant Kuraitis' response to the First Amended Complaint  
14 is due on April 8, 2020 and Kuraitis presently intends to file a  
15 Motion to Dismiss the First Amended Complaint.

16 Dated: April 6, 2020

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19 By: /s/ Richard Pachter  
20 RICHARD PACHTER  
21 Attorney for Defendant Justin F.  
22 Kuraitis  
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I, Richard Pachter, declare,

I am a citizen of the United States and employed in the City and County of Sacramento California. I am over the age of 18 and not a party to the within action; my business address is 555 University Avenue, Suite 200, Sacramento, CA 95825.

On April 6, 2020, I served the following document(s):

**DEFENDANT KURAITIS' STATEMENT OF POSITION AND NOTICE OF WITHDRAWAL OF DEFENDANT JUSTIN KURAITIS' MOTION TO DISMISS (ECF 33)**

BY ELECTRONIC MAIL TRANSMISSION: By electronic mail transmission from richard@pachterlaw.com on April 6, 2020, by transmitting a PDF format copy of such document(s) to defendant Michael Postle each such person at the e-mail address which he had provided of [JRSTOX@yahoo.com](mailto:JRSTOX@yahoo.com). The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error. Mr. Postle has previously agreed to accept service of documents from the undersigned by email in this matter.

I declare under penalty of perjury under the laws of the State of California that the information submitted is true and correct and that this declaration was executed on April 6, 2020 at Sacramento, California.

/s/ Richard Pachter  
Richard Pachter