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15 *successor by merger with*
King's Casino, LLC
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19 UNITED STATES DISTRICT COURT
20 EASTERN DISTRICT OF CALIFORNIA
21

22 VERONICA BRILL; et al.,

23 *Plaintiffs,*

24 v.

25 MICHAEL L. POSTLE; et al.,

26 *Defendants.*
27
28

Case No. 2:19-cv-02027-WBS-AC

**STATEMENT RE MOOTNESS AND
NOTICE OF WITHDRAWAL OF
MOTION TO DISMISS**

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

1 Defendant King's Casino Management Corp., successor by merger with King's Casino,
2 LLC dba Stones Gambling Hall ("Stones") submits this Statement re Mootness and Notice of
3 Withdrawal regarding its Motion to Dismiss (ECF 31). On March 4, 2020, Stones moved to
4 dismiss the initial complaint in this case. As is their right, Plaintiffs filed a First Amended
5 Complaint (ECF 40) on March 25, 2020, presumably intending to correct various deficiencies
6 identified by Defendants' motions to dismiss. Plaintiffs then filed a document titled Suggestion
7 of Mootness (ECF 41) regarding the motions to dismiss filed by Stones and other Defendants.

8 Stones' motion to dismiss was rendered moot by Plaintiffs' filing of an amended
9 complaint. "It is well-settled in our circuit that an 'amended complaint' supersedes the original,
10 the latter being treated thereafter as non-existent." *Ramirez v. Cty. of San Bernardino*, 806 F.3d
11 1002, 1008 (9th Cir. 2015) (citations omitted). A motion to dismiss a superseded complaint is
12 "deemed moot" because it challenges a pleading that no longer exists. *Id.*

13 Stones' motion to dismiss (ECF 31) is moot in light of Plaintiffs' decision to file the First
14 Amended Complaint within their time to do so as of right. *See* Fed. R. Civ. P. 15(a)(1)(B). In
15 light of the initial complaint being superseded and the motion challenging the complaint being
16 moot, Stones withdraws its motion to dismiss (ECF 31).

17 Stones' response to the First Amended Complaint is due on April 8, 2020, and Stones
18 intends to file a motion to dismiss the First Amended Complaint.

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21 Respectfully submitted,

22 Dated: April 7, 2020

By: /s/ Mark C. Mao

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PROOF OF SERVICE

I, Alexander J. Holtzman, declare:

I am a citizen of the United States and employed in the City and County of San Francisco, CA. I am over the age of 18 and not a party to the within action; my business address is 44 Montgomery St., 41st Floor, San Francisco, CA 94104.

On April 7, 2020, I served the following document(s) described as:

**STATEMENT RE MOOTNESS AND NOTICE OF
WITHDRAWAL OF MOTION TO DISMISS**


- ☐ **BY FACSIMILE TRANSMISSION:** As follows: The papers have been transmitted to a facsimile machine by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause and served on the party making the service. The copy of the notice or other paper served by facsimile transmission shall bear a notation of the date and place of transmission and the facsimile telephone number to which transmitted or be accompanied by an unsigned copy of the affidavit or certificate of transmission which shall contain the facsimile telephone number to which the notice of other paper was transmitted to the addressee(s).
- ☒ **BY MAIL:** As follows: Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- ☐ **BY OVERNIGHT MAIL:** As follows: I am readily familiar with the firm's practice of collection and processing correspondence for overnight mailing. Under that practice, it would be deposited with overnight mail on that same day prepaid at San Francisco, CA in the ordinary course of business.
- ☐ **BY ELECTRONIC MAIL TRANSMISSION:** By electronic mail transmission from _____ on _____, by transmitting a PDF format copy of such document(s) to each such person at the e-mail address(es) listed below their address(es). The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

1 Michael L. Postle
2 3724 Deer Walk Way
3 Antelope, CA 95843

Pro Se

4 I declare that I am employed in the office of a member of the bar of this court at
5 whose direction the service was made.

6 Executed on April 7, 2020, at San Francisco, CA.

7
8 
9 Alexander J. Holtzman