

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARKETING INFORMATION
MASTERS, INC., a California
corporation,

Plaintiff,

v.

THE BOARD OF TRUSTEES OF THE
CALIFORNIA STATE UNIVERSITY
SYSTEM, et. al.,

Defendants.

Civil No. 06cv1682 JAH (JMA)

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS AS MOOT**

Pending before the Court is Defendants'¹ motion to dismiss [Doc. No. 5]. Plaintiff filed a response on November 2, 2006 and an amended complaint on November 8, 2006. In a reply filed November 8, 2006, Defendants note Plaintiff filed an amended complaint and maintain the motion remains applicable to the amended complaint. Citing to a practice guide, Defendants contend a court may proceed with a motion to dismiss a complaint although the complaint is superseded by an amended complaint, if the amendment does not cure the defect that exists in the original.

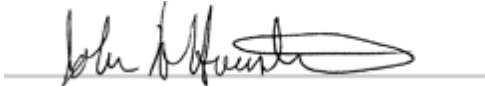
This Court, however, finds the amended complaint supersedes the original complaint. As such, the motion to dismiss the original complaint is moot, despite Defendants' argument to the contrary. Additionally, the Court notes the amended complaint possibly cures the lack

¹On September 20, 2006, Defendant Robert A Rauch filed a joinder in Defendant Board of Trustees of the California State University motion to dismiss.

1 of subject matter jurisdiction issue raised in the motion, as Defendants fail to address the issue
2 in their reply.

3 Accordingly, IT IS HEREBY ORDERED Defendants' motion to dismiss the complaint
4 is **DENIED AS MOOT**. The motion set for November 16, 2006 is **VACATED**.

5 DATED: November 8, 2006



HON. JOHN A. HOUSTON
United States District Judge

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28