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NOT FOR PUBLICATION
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Jennifer Burritt, et al.,

No. CV-09-00406-PHX-FJM

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Plaintiffs,

ORDER

11

vs.

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NutraCea, et al.,

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Defendants.

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The court has before it plaintiffs’ motion for leave to amend the consolidated amended complaint (doc. 40), defendants’ response (doc. 43), and plaintiffs’ reply (doc. 48). We also have before us motions to dismiss by defendants Crow, Edson, and NutraCea (respectively doc. 35, 36, & 37), plaintiffs’ motion for leave to file a joint response and joint response (doc. 42 & 47), and defendants’ replies (doc. 50, 54, & 51).

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Under Rule 15(a)(2), Fed. R. Civ. P., a party may amend a pleading outside of an amendment as a matter of course “only with the opposing party’s written consent or the court’s leave.” We will grant leave “when justice so requires.” *Id.* A motion for leave to amend may be denied for undue delay, bad faith, or dilatory motive on the part of the movant or for undue prejudice to the opposing party. Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 104, 1052 (9th Cir. 2003) (per curiam) (citation omitted).

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1 Defendants oppose the motion for leave to amend on the grounds that the timing of
2 the motion in relation to the pending motions to dismiss indicates bad faith and undue delay
3 and that the costs of additional motions to dismiss would be unduly prejudicial. Defendants
4 also assert that much of the information in the proposed amended complaint was available
5 previously and that granting the motion would disrupt the deadlines set by our Rule 16
6 scheduling order (doc. 28).

7 Plaintiffs contend that leave to amend is justified because the proposed amended
8 complaint contains new information first discovered through a source who came forward on
9 August 4, 2009. Plaintiffs also point out correctly that the deadline for filing motions to
10 amend the complaint under our scheduling order is December 1, 2009.

11 We find insufficient evidence of undue delay or bad faith in the timing of plaintiffs'
12 motion to amend. And the costs of additional motions to dismiss at this stage do not rise to
13 the level of undue prejudice. We grant plaintiffs' motion to amend the consolidated amended
14 complaint (doc. 40).

15 Once a complaint has been amended, the amended complaint supersedes the prior
16 complaint and the latter is "treated thereafter as non-existent." Loux v. Rhay, 375 F.2d 55,
17 57 (9th Cir. 1967) (citations omitted). Because the plaintiffs have lodged an amended
18 consolidated complaint, the motions to dismiss by defendants Crow, Edson, and NutraCea
19 are now moot and are denied on that basis. Plaintiffs' motion to file a joint response is also
20 moot and denied.

21 **IT IS THEREFORE ORDERED GRANTING** plaintiffs' motion for leave to
22 amend (doc. 40) and **DENYING** plaintiffs' motion for leave to file a joint response (doc. 42).

23 **IT IS FURTHER ORDERED DENYING** defendant Crow's motion to dismiss (doc.
24 35), **DENYING** defendant Edson's motion to dismiss (doc. 36), and **DENYING** defendant
25 NutraCea's motion to dismiss (doc. 37).

26 **IT IS FURTHER ORDERED** amending the Rule 16 Scheduling Order (doc. 28)
27 only as follows. Paragraph 1A is amended such that any motions to dismiss shall be filed no
28 later than October 7, 2009 with a normal briefing schedule under LRCiv 7.2. Paragraph 1B

1 is amended such that all initial disclosures shall be made no later than January 4, 2010.
2 Paragraph 3 is amended such that there shall be no further amended complaints. Paragraph
3 3A is amended such that motions for class certification shall be filed no later than February
4 1, 2010. The parties are advised that these amendments shall have no effect on the remainder
5 of the Rule 16 order.

6 The clerk shall file the lodged amended consolidated complaint under LRCiv 15.1(c).

7 DATED this 24th day of September, 2009.

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Frederick J. Martone

Frederick J. Martone
United States District Judge