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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Martha E. Payan; Xavier Payan,
Plaintiffs,
vs.
City of Phoenix; et al.,
Defendants.

No. CV 09-1917-PHX-JAT

ORDER

On November 2, 2009, Defendant City of Phoenix moved to dismiss. On November 13, 2009, Plaintiffs moved to amend. As the City notes in its response to the motion to amend, the City filing a motion to dismiss did not cut off Plaintiffs' ability to amend the complaint once as a matter of right under Federal Rule of Civil Procedure 15(a). *See Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). However, as the City notes, Plaintiffs failed to include the proposed amended complaint as is required by the local rules.

Because Plaintiffs may amend once as a matter of right, the Court will grant leave to amend. The Court will deny the motion to dismiss as moot. If Plaintiffs fail to file an amended complaint, the Court will dismiss this case for failure to prosecute and failure to comply with a Court order. *See Fed.R.Civ.Pro. 41(b)*. Accordingly,

