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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

OCCUPY FRESNO, et al.,	)	1: 11- CV-1894 AWI DLB
)	
Plaintiff,	)	ORDER ON RENEWED
	)	MOTION FOR TEMPORARY
v.	)	RESTRAINING ORDER
	)	(Doc. 29)
COUNTY OF FRESNO, et al.,	)	ORDER ON MOTION FOR
	)	TEMPORARY RESTRAINING
Defendants.	)	ORDER DURING PENDENCY
	)	OF MOTION FOR
<hr style="width: 40%; margin-left: 0;"/>	)	PRELIMINARY INJUNCTION
	)	ORDER VACATING
	)	DECEMBER 2, 2011 HEARING
	)	(Doc. 33)

This is a civil rights action brought by Plaintiffs pursuant to 42 U.S.C. § 1983 challenging a number of Defendants’ ordinances relating to public use permits for activities in Courthouse Park. Specifically, Plaintiffs have been told that all attendees to their protest rally must vacate the park prior to 12 a.m. (midnight) every night without exception and that they can only use the park between the hours of 6 a.m. and 12 a.m. Plaintiffs have also been forbidden to hold protester signs. Plaintiffs contend that Defendants have interfered with their Right to Peaceably Assemble, the Right of Speech, Right to Petition the Government for a Redress of Grievances; and, the Right to Due Process. Now pending are two motions filed by Plaintiffs seeking a temporary restraining order.

1 On November 13, Plaintiffs filed an *ex parte* motion for a temporary restraining order
2 against Defendants. On November 15, 2011, the Court denied that motion without prejudice, and
3 set a briefing schedule for a motion for preliminary injunction. See Court’s Docket Doc. No. 26.
4 On November 17, 2011, Plaintiffs filed a “Renewed Motion for Temporary Restraining Order,
5 Declaratory Relief, and Preliminary Injunction” (the “Renewed Motion”). See id. Doc. No. 29.
6 The Renewed Motion is currently pending and Defendants’ opposition is due by 4:00 p.m. on
7 Friday, December 2, 2011.

8 On November 21, 2011, Plaintiffs filed a First Amended Complaint (“FAC”). See id.
9 Doc. No. 31. Under the customary liberal pleading standard mandated by Federal Rule of Civil
10 Procedure 15(a), Plaintiffs may amend their pleading once as a matter of course within 21 days
11 after service. Plaintiffs served their original complaint on November 15, 2011. See Doc. Nos.
12 15, 16. They filed the FAC on November 21, 2011, within the 21-day time period required by
13 Rule 15(a). Generally, a FAC moots the original complaint. See Forsyth v. Humana, Inc., 114
14 F.3d 1467, 1474 (9th Cir. 1997) (“This rule is premised on the notion that the ‘amended
15 complaint supersedes the original, the latter being treated thereafter as non-existent.’”) (quoting
16 Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967)). Local Rule 15-220 provides that an amended
17 complaint must be “complete in itself, without reference to the prior or superseded pleading.”
18 “All causes of action alleged in an original complaint which are not alleged in an amended
19 complaint are waived.” King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Plaintiffs’ Renewed
20 Motion is directed at the original complaint, which is now rendered inoperative by the FAC. The
21 Renewed Motion shall therefore be denied as moot.

22 Also pending is Plaintiffs’ Motion for Temporary Restraining Order During Pendency of
23 the Motion for Preliminary Injunction, which was filed on November 22, 2011. See Doc. No. 33.
24 This application appears to have narrowed the relief requested by Plaintiffs. Defendants were
25 given notice of this motion. “When the opposing party actually receives notice of the application
26 for a restraining order, the procedure that is followed does not differ functionally from that on an
27

1 application for preliminary injunction and the proceeding is not subject to any special
2 requirements.” C. Wright and A. Miller, Federal Practice and Procedure, § 2951 (2d ed.). Even
3 if a motion is denominated as motion for a temporary restraining order, “Rule 65(b) may not
4 apply and, if there is an adversary hearing or the order is entered for an indeterminate length of
5 time, the ‘temporary restraining order’ may be treated as a preliminary injunction.” Id.; Fed. R.
6 Civ. P. 65. As the court found in its order dated November 15, 2011, the court will deny the
7 motion for a temporary restraining order to allow for further briefing. The court will, however,
8 treat the Motion for Temporary Restraining Order During Pendency of the Motion for
9 Preliminary Injunction (Doc. No. 33) as the operative motion for preliminary injunction, and will
10 proceed with the preliminary injunction briefing schedule set forth in the November 15, 2011
11 order.

12 Accordingly, the court ORDERS that:

- 13 1. Plaintiffs’ Renewed Motion for Temporary Restraining Order, Declaratory Relief,
14 and Preliminary Injunction (Doc. No. 29) is DENIED AS MOOT.
- 15 2. Plaintiffs’ Motion for Temporary Restraining Order During Pendency of the
16 Motion for Preliminary Injunction (Doc. No. 33) is DENIED without prejudice
17 and SHALL be deemed the operative motion for preliminary injunction. The
18 December 2, 2011 hearing date is VACATED.
- 19 3. Defendants *may* file any opposition to Plaintiffs’ motion by 4:00 p.m. on
20 December 2, 2011;
- 21 4. Plaintiffs *may* file any reply by 1:00 p.m. on December 6, 2011;
- 22 5. The court will hear Plaintiffs’ motion for preliminary injunction on December 12,
23 2011, at 1:30 p.m.

24 IT IS SO ORDERED.

25 Dated: November 23, 2011

26 
27 CHIEF UNITED STATES DISTRICT JUDGE